UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS,

Petitioner,

- against -

AMERICAN FLOORING CONCEPTS INC.,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION
18-CV-2657 (AMD)(RLM)

ANN M. DONNELLY, United States District Judge:

On May 4, 2018, the petitioner, New York City District Council of Carpenters, commenced this action against American Flooring Concepts Inc. to confirm an arbitration award. (ECF No. 1.) On September 7, 2018, the Honorable Roanne L. Mann issued a Report and Recommendation ("R&R") in which she recommended that I confirm the arbitration award and grant the requested relief, with one exception: Judge Mann recommended I deny the petitioner's request that it be paid the respondent's half of the arbitrator's fee, because the there was no evidence that the petitioner made payments that required reimbursement. (ECF No. 10 at 8–9.)[1] On September 24, 2018, the petitioner objected to Judge Mann's conclusion about the arbitrator's fee, and to her observation that counsel cited the wrong collective bargaining agreement ("CBA").[2] (ECF No. 12 at 2–3.)

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28

[1] The respondent has never appeared and did not file any objections.

[2] Judge Mann concluded that the CBA required the losing party to pay the arbitrator's fee; Judge Mann believed that the petitioner relied on a "different CBA in another case." (*Id.* at 9, n.9.)

U.S.C. § 636(b)(1)(C). When a party submits a timely objection, the district court must "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *accord* Fed. R. Civ. P. 72(b)(3). The court reviews for clear error the remaining portions of a report and recommendation to which there are no specific reasoned objections. *See Pall Corp. v. Entegris, Inc.*, 249 F.R.D. 48, 51 (E.D.N.Y. 2008).

I have reviewed Judge Mann's thorough and well-reasoned R&R and the record. I adopt her recommendation that I confirm the arbitration award, and to award the petitioner $14,282.22 under the arbitration award, $2,766.25 in attorneys' fees and costs, and pre-judgment interest on $14,282.22 from May 6, 2017, and post-judgment interest on $17,048.47, both to be calculated by the Clerk of the Court pursuant to 28 U.S.C. § 1961. (ECF No. 10 at 15.) I also adopt Judge Mann's recommendation that the petitioner cannot recover the respondent's portion of the arbitrator's fee, $1,000.[3] (*Id.* at 8–9, 15.)

SO ORDERED.

s/Ann M. Donnelly
Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
October 4, 2018

[3] The petitioner is correct that the shared fees provision is not "from an entirely different CBA in another case," and that the petitioner cited the correct CBA. Nevertheless, the petitioner does not challenge Judge Mann's ultimate recommendation that the petitioner should not recover the respondent's half of the arbitrator's fee. (*See* ECF No. 10 at 8–9, 15.)

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REPORT AND RECOMMENDATION

18-CV-2657 (AMD)

ROANNE L. MANN, CHIEF UNITED STATES MAGISTRATE JUDGE:

Currently pending before this Court, on a referral from the Honorable Ann M. Donnelly, is a petition, filed by petitioner New York City District Council of Carpenters ("petitioner") on May 4, 2018, to confirm an arbitration award. See Petition to Confirm Arbitration Award (May 4, 2018) ("Petition"), Electronic Case Filing ("ECF") Docket Entry ("DE") #1; Order Referring Petition (July 24, 2018) ("Referral"). Although properly served, respondent American Flooring Concepts Inc. ("respondent") has not opposed the Petition or otherwise appeared in this proceeding. For the reasons discussed below, this Court recommends that the District Court confirm the arbitration award and grant in substantial part the relief sought in the Petition.

THE UNDERLYING FACTS AND PROCEDURAL BACKGROUND

On July 1, 2011, the parties entered into a four-year collective bargaining agreement (the "CBA"). See generally Affidavit of Lydia Sigelakis (Aug. 21, 2018) ("Sigelakis Aff.") ¶ 6, DE #7; Sigelakis Aff., Exhibits 1-7 (Aug. 21, 2018) ("Exhibits") at 13-56 ("CBA"), DE

#7-1.[1] In 2016, disputes between the parties arose out of the CBA, and a grievance process did not resolve them. See Sigelakis Aff. ¶¶ 11, 14; Exhibits at 64-70. As provided by the CBA, see CBA Art. XI(H) (Exhibits at 43), XIV §§ 1-4 (Exhibits at 51-52), petitioner instituted arbitration proceedings against respondent to resolve those disputes, see Sigelakis Aff. ¶ 14, and served respondent with notice thereof, see Exhibits at 61-63. Despite this notice, respondent failed to appear at the arbitration hearing on April 26, 2017. See Petition, Exhibit A ("Arbitration Award") at 1, DE #1-1. The arbitrator nevertheless conducted an evidentiary hearing and, on May 6, 2017, issued a (modified) arbitration award, finding in favor of petitioner. See Arbitration Award at 2-3.

One year later, just before the expiration of the statute of limitations, see 9 U.S.C. § 9, petitioner filed the instant Petition to confirm the arbitration award, see generally Petition. Petitioner served respondent with the Petition on May 11, 2017, through Nancy Dougherty, the clerk of the Secretary of State of New York, who was authorized to accept service for respondent. See Summons (June 15, 2018) ("Summons"), DE #5. On July 24, 2018, after the deadline had passed for respondent to respond to the Petition, Judge Donnelly referred the Petition to this Court for a report and recommendation. See Referral. This Court then directed petitioner to supplement the record with, *inter alia*, a copy of the CBA and documents reflecting how damages were calculated. See Order (Aug. 7, 2018), DE #6. Respondent was

[1] The CBA contains a section that, absent termination by either side, provides for automatic one-year renewals upon the expiration of the CBA's initial four-year term. See CBA Art. XXI (Exhibits at 55).

Rather than referencing each exhibit's internal pagination, this opinion cites to the page numbers in the Exhibits imprinted by the ECF system.

directed to show cause, in writing, by September 5, 2018, why the relief requested should not be granted. See id. at 2. Once again, respondent failed to make its appearance in this matter.

DISCUSSION

I. Confirmation of the Arbitration Award

A. General Legal Principles

"[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984). In other words, all that confirmation does is arm the already "winning party" in the arbitration with "a variety of remedies" to "enforce the judgment"—and, by extension, the arbitration award. See id. Accordingly, in order to streamline such a proceeding, courts treat a petition to confirm an arbitration award as a motion to confirm. See Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 582 (2008); D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 107-08 (2d Cir. 2006). In this connection, the motion to confirm is akin to a motion for summary judgment, in that regardless of whether the respondent appears, the court reviews the motion in the context of a record—usually consisting of the agreement to arbitrate and the arbitration award decision. See D.H. Blair, 462 F.3d at 107-10 (holding that, because petitions to confirm arbitration awards are "motions in an ongoing proceeding rather than a complaint initiating a plenary action[,]" the procedural mechanism of default and default judgment is inapplicable); but cf. Laundry, Dry Cleaning Workers & Allied Indus. Health Fund, Unite Here! v. Jung Sun Laundry Grp. Corp., No. 08-CV-2771 (DLI)(RLM), 2009 WL 704723, at *3 (E.D.N.Y. Mar. 16, 2009) (noting that, "despite the Second Circuit's pronouncement in *D.H. Blair*," some courts in this District have

held that default and default judgments, which consider the sufficiency of the petition's "pleading" as opposed to the petition's accompanying record, are appropriate where the respondent not only failed to oppose the petition, but also failed to appear in the underlying arbitration); New York City Dist. Council of Carpenters v. Trinity Phoenix Constr. Corp., 17-CV-609-DLI-SJB, 2018 WL 1521862, at *2-4 (E.D.N.Y. Jan. 10, 2018).[2]

The standard of review for a petition to confirm an arbitration award similarly furthers the summary nature of such proceedings. Specifically, there is "no general requirement that arbitrators explain the reasons for their award[.]'" Landy Michaels Realty Corp. v. Local 32B-32J, Serv. Employees Int'l Union, 954 F.2d 794, 797 (2d Cir. 1992) (quoting Sobel v. Hertz, Warner & Co., 469 F.2d 1211, 1214 (2d Cir. 1972)). If, from the record, a court can infer even a "barely colorable justification for the outcome reached[,]" D.H. Blair, 462 F.3d at 110; see Wallace v. Buttar, 378 F.3d 182, 193 (2d Cir. 2004) (quoting Fahnestock & Co., Inc. v. Waltman, 935 F.2d 512, 516 (2d Cir. 1991)), the court "must" grant the petition, see Hall, 552 U.S. at 582.[3] This highly deferential standard of review is particularly significant in

[2] The Second Circuit in D.H. Blair, in comparing a petition to confirm an arbitration award to a motion for summary judgment, did not suggest that the summary judgment standard of review should be applied to petitions to confirm. Rather, the Circuit made this comparison in reasoning that the judicial proceeding on a petition to confirm an arbitration award is not analogous to a plenary action and pleading in connection with which a party may be held in default. See D.H. Blair, 462 F.3d at 107-10 (noting that petitions to confirm are motions in an ongoing arbitration proceeding, not a pleading in a plenary action). The Circuit held that where, as here, the respondent fails to oppose the petition, the court should treat that petition as an unopposed motion, just as it would if a party did not oppose a motion for summary judgment. See D.H. Blair, 462 F.3d at 107-10.

[3] Both before and after D.H. Blair, the standard of review for a petition to confirm an arbitration award has been whether the arbitration record supports an inference of a "barely colorable justification for the outcome reached." D.H. Blair, 462 F.3d at 110; see Leeward Constr. Co., Ltd. v. Am. Univ. of Antigua-Coll. of Med., 826 F.3d 634, 638 (2d Cir. 2016) (quoting Banco de Seguros del Estado v. Mut. Marine Office, Inc., 344 F.3d 255, 260 (2d Cir. 2003)). Relatedly, the Second Circuit has held that when faced with a motion to vacate an arbitration award, a court may vacate where the award was

the context of labor arbitration awards: "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960); see Nat'l Football League Mgmt. v. Nat'l Football League Players Ass'n, 820 F.3d 527, 532 (2d Cir. 2016) ("[A] federal court's review of labor arbitration awards is narrowly circumscribed and highly deferential—indeed, *among the most deferential in the law*." (emphasis added)).

B. The Arbitrator's Award

The arbitrator did not expressly detail each of the particular provisions breached under the CBA nor the basis for his findings of fact. See Arbitration Award at 2. Nevertheless, the CBA contains three provisions that are pertinent to this case. First, the CBA provides that, for each hour that an employee works, respondent must pay wages to, and make fringe benefits contributions on behalf of, the covered employee. See generally CBA Art. VI §§ 1-3 (Exhibits at 22-30).[4] Second, the CBA requires that respondent make these payments within three business days from the end of the workweek. See id. Art. VI § 3(B) (Exhibits at 29). In the event that respondent fails to make timely payment, the CBA provides the following late

rendered in "manifest disregard of the law." D.H. Blair, 462 F.3d at 110; see Schwartz v Merrill Lynch & Co., 665 F.3d 444, 451-52 (2d Cir. 2011). "A party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high." D.H. Blair, 462 F.3d at 110.

[4] Further, work performed in excess of seven hours in a given day during the workweek, and any work performed on a Saturday, is paid at one and one half times the otherwise applicable rate. See CBA Art. IV §§ (A), (C)-(D) (Exhibits at 19).

payment penalty schedule: Respondent must pay a two-hour penalty (calculated at the employee's hourly wage rate) per day for up to three days, after which respondent must pay time-and-one-half of the applicable wage rate for each hour in excess of 72 hours that the employee waits to be paid, not to exceed fourteen hours. See id.[5] And third, the CBA requires that the "second Carpenter on the jobsite shall be the Certified Shop Steward referred by the Union." CBA Art. IX § (B)(1), (C)(1) (Exhibits at 33).

The arbitrator's award states that respondent violated the CBA in three ways. First, respondent failed to "pay 42 hour[s] of fringe benefits, on behalf of Junior Edward, for work performed at 1 WTC, New York" on days from July 18, 2016 through July 24, 2016. Arbitration Award at 2; see Exhibits at 64. Second, respondent made late payments to "William Coralan, Jeffrey Tolk, Michael Guerino, Vincent Borgia and Louis Fertig for work performed at the Tory Burch Store, Manhasset, NY, and at Regus, Hicksville, NY," in March and April 2016. Arbitration Award at 2. And third, respondent failed to "call for a shop steward for night work at the Tory Burch Store, Manhasset, NY" on January 11, 2016. Id.

The arbitrator thus found respondent in breach of the CBA. See id. With respect to the first breach, the arbitrator awarded fringe benefits amounting to $1,942.92: forty-two hours (i.e., six full workdays of seven hours per day) times the hourly benefit rate for a journeyman floor coverer ($46.26). See id. at 2.

[5] Although not addressed by petitioner, the CBA provides that "no contributions [for any of the benefits] shall be required on the premium portion [i.e., the additional 50 percent] of wages. For the purposes of [the benefit] Sections [of the CBA] only, all hours worked shall be regarded as straight-time hours." CBA Art. XI § (E) (Exhibits at 42).

With respect to the second breach, the arbitrator awarded a "[l]ate payment penalty (less statutory deductions) to each of the 5 Grievants, along with fringe benefits . . . ." Id. Those sums amount to the maximum penalty provided under the CBA. Specifically, for each of the five employees, the late wages penalty amounts to $1,363.50: (1) three days of two hours per day at the employee's straight-time wage rate of $50.50 for a journeyman floor coverer, plus (2) fourteen hours at one and one half times the straight-time wage rate of $50.50. See Arbitration Award at 2; Exhibits at 58 (journeyman rate). The arbitrator also awarded, for each of the five employees, a late payment penalty amounting to $933, based on the employees' straight-time rate for benefits (i.e., $46.26)[6] plus a $0.39 per hour contribution to the Industry Promotion Fund: three days of two hours per day at a rate of $46.65, plus fourteen hours at the straight-time benefits rate. See Arbitration Award at 2; Exhibits at 59 (total rate); Sigelakis Aff. ¶ 16(b)[7].

Finally, with respect to the third breach, the arbitrator awarded $856.80 "in settlement," representing wages and benefits for a shop steward: one full workday of seven hours of overtime wages at $75.75 per hour and seven hours of benefits at $46.65 per hour. See Arbitration Award at 2; Exhibits at 58-59; Sigelakis Aff. ¶ 17(c) ($46.65 equals the sum of the straight-time benefits rate of $46.26 plus a $0.39 contribution to the Industry Promotion Fund).

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[6] See *supra* note 5.

[7] The arbitrator also awarded $378.42 each for William Coralan and Louis Fertig for unpaid benefits, but petitioner apparently does not now seek to have those amounts included in the judgment. Compare Arbitration Award at 2 (awarding a total of $15,039.06), with Sigelakis Aff. ¶ 22 (referencing award of $14,282.22); see also Petition at 3-4 (although seeking to have the arbitration award confirmed "in its entirety[,]" the Petition does not include the two awards of $378.42 in its *ad damnum* clause).

There is thus more than a barely colorable justification for the arbitrator's outcome and awards. As respondent has failed to appear before the Court—let alone raise any argument regarding vacatur, modification, or correction—and no defense is apparent from the record, confirmation is mandatory. See generally Steelex S.A. v. Dasil Corp., No. 07-CV-2309 (RLM), 2007 WL 4373262, at *2 (E.D.N.Y. Dec. 10, 2007). This Court thus recommends that the District Court confirm the arbitrator's awards in petitioner's favor, aggregating $14,282.22.

II. Arbitrator's Fee

Plaintiff also seeks $1,000 as respondent's half of the arbitrator's fee. See Sigelakis Aff. ¶ 22; Memorandum in Support (Aug. 21, 2018) ("Pet. Mem") at 9, DE #7-2. Absent evidence that petitioner has paid $1,000 toward the arbitrator's fee, that request should be denied.

In another case brought by petitioner in this District, this Court recently recommended against awarding petitioner the respondent's portion of the arbitrator's fees. See New York City Dist. Council of Carpenters v. Allied Design & Constr., LLC, 17-CV-6461 (PKC), 2018 U.S. Dist. LEXIS 133891, at *8-9 (E.D.N.Y. Aug. 7, 2018) (quoting Trinity Phoenix Constr., 2018 WL 1521862, at *6), objection filed, DE #10 in 17CV6461 (Aug. 24, 2018).[8] In Allied Design, this Court reasoned that nothing in the arbitrator's award or in the relevant CBA indicated that petitioner was in any way legally entitled to, or otherwise responsible for collecting, the arbitrator's fee. See id. at *8-9 & n.8. This Court thus concurred with the

[8] Petitioner has objected to that aspect of the Court's Report and Recommendation, and to its recommendation regarding the appropriate rate of prejudgment interest. The objection is still pending.

conclusion reached by Judge Sanket Bulsara in Trinity Phoenix, 2018 WL 15 21862, at *6, that such a right belongs to the arbitrator, not to petitioner. See Allied Design, 2018 U.S. Dist. LEXIS 133891 at *8-9. As the record in Allied Design did not establish that petitioner had paid the arbitrator the respondent's portion of the fees, this Court recommended against including such amount in the judgment. See id. at *8-9 & n.8

By contrast, here, the CBA expressly states that the "cost of the arbitration, including the fees to be paid to the arbitrator shall be included in the award and shall be borne by the losing party." CBA Art. XI § (H) (Exhibits at 44).[9] Therefore, assuming that petitioner paid $1,000 as a portion of the arbitrator's fee, petitioner, as the prevailing party, would then be entitled to a judgment awarding it $1,000 as reimbursement for that portion of the arbitrator's fee. Absent a showing of such payment, here, as in Allied Design and Trinity Phoenix, petitioner has no standing to collect an outstanding debt owed by respondent to the arbitrator. As petitioner has not alleged, let alone shown, that it has paid portion of the fee, see generally, e.g., Pet. Mem. at 9; Sigelakis Aff. ¶ 22; Exhibits at 82-86, this Court recommends that petitioner's request be denied, but that petitioner be afforded an opportunity to proffer evidence that it has in fact incurred that cost.

[9] Petitioner erroneously asserts (and the arbitrator assumed) that the CBA provides as follows: "The costs of the arbitration, including the arbitrator's fee shall be borne equally by the Employer and the Union." Sigelakis Aff. ¶ 9 (purporting to quote CBA, Art. XIV § 2); see Arbitration Award at 3 (noting that "the parties have agreed [in the CBA] to share the cost of the arbitrator's fee"). In fact, the relevant CBA contains no such language. It appears that petitioner's quotation is from an entirely different CBA in another case.

III. Interest

Petitioner also seeks prejudgment interest at the New York statutory rate of nine percent per year, see N. Y. C.P.L.R. § 5004, as well as post-judgment interest. See Sigelakis Aff. ¶ 25; Pet. Mem. at 7-8. The Court construes petitioner's request as seeking prejudgment interest from the date of the award, May 6, 2017. See Retail, Wholesale & Chain Store Food Employees Union, Local 338 v. Red Apple Supermarkets, No. CIVA98-CV0215 (DGT), 1999 WL 551253, at *3 (E.D.N.Y. June 24, 1999) ("arbitrator's silence as to prejudgment interest generally bars the allocation of 'pre-award,' prejudgment interest").

In the absence of a statutory directive, whether to award prejudgment interest is a matter entrusted to the court's discretion. See, e.g., Jones v. UNUM Life Ins. Co. of Am., 223 F.3d 130, 139 (2d Cir. 2000). As petitioner correctly observes, see Pet. Mem. at 7, courts have recognized a presumption in favor of prejudgment interest where, as here, the applicable collective bargaining agreement provides that arbitration awards shall be "final and binding[,]" see Bldg. Material Teamsters Local 282 v. A Star Bus. Servs. of N.Y., No. 11CV4646 KAM, 2012 WL 3568262, at *6 (E.D.N.Y. May 30, 2012); see also CBA Art. XI(H) (Exhibits at 43). This Court therefore recommends that the judgment include an award of prejudgment interest from May 6, 2017.

"Determining the rate of interest to be applied is also within the discretion of the court . . . ." Local 335, United Serv. Workers Union, IUJAT v. Roselli Moving & Storage Corp. No. CV 09-3583(JS)(ARL), 2010 WL 3283553, at *3 (E.D.N.Y. July 20, 2010), adopted, 2010 WL 3257792 (E.D.N.Y. Aug. 13, 2010). Petitioner seeks prejudgment interest at the rate prescribed under New York State law: nine percent. See Pet. Mem. at 7-8. "[T]hough it

may be proper as a matter of convenience to look to state law to determine the appropriate rate[,]" Roselli Moving & Storage, 2010 WL 3283553, at *3, some courts have eschewed this approach and have instead used the rate that governs awards of post-judgment interest in federal cases, as embodied in 28 U.S.C. § 1961; that provision links the federal post-judgment interest rate to "the rate of interest the government pays on money it borrows by means of Treasury bills[,]" Jones, 223 F.3d at 139 (citing 28 U.S.C. § 1961(a)); see Goldman Sachs Execution & Clearing, L.P. v. Official Unsecured Creditors' Comm. of Bayou Grp., LLC, 491 F.App'x 201, 206 (2d Cir. 2012) (affirming prejudgment interest award "according to the federal rate set forth in 28 U.S.C. § 1961, rather than the New York Statutory rate"); Steelex S.A., 2007 WL 4373262, at *2 (same); Sarhank Grp. v. Oracle Corp., No. 01 Civ. 1285 (DAB), 2004 WL 324881, at *4 (S.D.N.Y. Feb. 19, 2004) (same), vacated and remanded on other grounds, 404 F.3d 657 (2d Cir. 2005); Red Apple Supermarkets, 1999 WL 551253, at *5 ("Although there is some precedent for applying the state statutory interest rate in a diversity action, this action is before the court on the basis of § 301 of the Labor Management Relations Act of 1947. Thus, the federally mandated rate seems more appropriate." (citations omitted)).

As the Second Circuit has acknowledged, the section 1961 post-judgment interest rate may be suitable for an award of prejudgment interest, "depend[ing] on the circumstances of the individual case." Jones, 223 F.3d at 139; accord Goldman Sachs Execution & Clearing, 491 F.App'x at 206. In this Court's view, the circumstances of this federal-question case do not warrant application of the far more generous rate prescribed by New York State law, especially where petitioner waited until the statute of limitations was about to expire before

filing its Petition. To award nine percent interest for the period from May 2017 until judgment is entered would, in these circumstances, result in a windfall to petitioner. See Sarhank Grp., 2004 WL 324881, at *4 ("[T]he interest rate must not overcompensate the Petitioner."). Therefore, here, as in Allied Design, 2018 U.S. Dist. LEXIS 133891, at *9-11, this Court recommends that the District Court exercise its discretion to award the same rate of interest for pre-and post-judgment interest, pursuant to 28 U.S.C. § 1961.

IV. Attorney's Fees and Costs

A. Governing Law

Where a party "refuses to abide by an arbitrator's decision without justification, attorney's fees and costs may properly be awarded." Int'l Chemical Workers Union, Local No. 227 v. BASF Wyandotte Corp., 774 F.2d 43, 47 (2d Cir. 1985) (quotations omitted); see Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. Manhattan Concrete Structures, Inc., No. 13 CV 5557 (DRH)(ARL), 2014 WL 4810262, at *5-6 (E.D.N.Y. Sept. 23, 2014); accord Trinity Phoenix Constr., 2018 WL 1521862, at *7. As respondent has failed to oppose the Petition, it has demonstrated no such justification. Moreover, the CBA provides that "[u]pon the confirmation of the arbitrator's award, the prevailing party shall, or on any appeal therefrom, be entitled to receive all court costs in each proceeding as well as reasonable counsel fees." CBA Art. XIV § 4 (Exhibits at 52).

With respect to fees, petitioner bears the burden of proving the reasonableness of the fees sought. See Savoie v. Merchs. Bank, 166 F.3d 456, 463 (2d Cir. 1999). In considering an application for attorney's fees, the Court must first determine the presumptively reasonable

fee. See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany, 522 F.3d 182, 183-84 (2d Cir. 2008). This presumptively reasonable fee—or lodestar[10]—is essentially "'what a reasonable, paying client would be willing to pay,' given that such a party wishes 'to spend the minimum necessary to litigate the case effectively.'" Simmons v. New York City Transit Auth., 575 F.3d 170, 174 (2d Cir. 2009) (quoting Arbor Hill, 493 F.3d at 112, 118).

Courts can and should exercise broad discretion in determining a reasonable fee award. See Hensley v. Eckerhart, 461 U.S. 424, 437 (1983) ("The court necessarily has discretion in making this equitable judgment."); Arbor Hill, 522 F.3d at 190 (referencing the court's "considerable discretion"). The method for determining reasonable attorney's fees in this Circuit is based on a number of factors, such as the labor and skill required, the difficulty of the issues, the attorney's customary hourly rate, the experience, reputation and ability of the attorney, and awards in similar cases. See Arbor Hill, 522 F.3d at 186 n.3, 190.

Once the Court determines the reasonable hourly rate, it must multiply that rate by the number of hours reasonably expended, in order to determine the presumptively reasonable fee. See Arbor Hill, 522 F.3d at 190. With very limited exceptions, "contemporaneous time records are a prerequisite for attorney's fees in this Circuit." N.Y. State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1147 (2d Cir. 1983). The Court must review these time records and the hours an attorney billed in order to determine the reasonableness of such and, in doing so, should examine the value of the work product and "exclude excessive, redundant or otherwise unnecessary hours." Concrete Flotation Sys., Inc. v. Tadco Constr.

[10] The lodestar is the product of the number of hours reasonably expended on the litigation and a reasonable hourly rate. See Arbor Hill, 522 F.3d at 183.

Corp., No. 07-CV-319 (ARR)(VVP), 2010 WL 2539771, at *5 (E.D.N.Y. Mar. 15, 2010) (quoting Quaratino v. Tiffany & Co., 166 F.3d 422, 425 (2d Cir. 1999)), adopted, 2010 WL 2539661 (E.D.N.Y. June 17, 2010); see Hensley, 461 U.S. at 434; Lunday v. City of Albany, 42 F.3d 131, 133 (2d Cir. 1994).

B. Application

Petitioner seeks a total award of $2,766.25: $2,180 for attorney's fees and $586.25 in costs. See Sigelakis Aff. ¶ 22; Pet. Mem. at 4-6. With respect to fees, petitioner requests an award of $250 per hour for 1.4 hours of work completed by its attorney, Lydia Sigelakis, before July 1, 2018, and $300 per hour for 6.1 hours of work completed by Ms. Sigelakis since July 1, 2018. See Sigelakis Aff. ¶ 22; id. ¶ 24 (noting that, after six years, plaintiff negotiated a new retainer on July 1, 2018 that increased Ms. Sigelakis' rate from $250, which was her rate since January 2012, to $300). Ms. Sigelakis is a partner with twelve years of experience in labor law. See id. ¶ 23. Although both the $300 hourly rate and the number of hours expended exceed what petitioner has sought in recent cases in this District, see, e.g., Trinity Phoenix Constr., 2018 WL 1521862, at *7-8, this Court concludes that the relatively modest amounts are not unreasonable, see Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. Pisgah Builders, Inc., 15-CV-2547 (ADS)(SIL), 2016 WL 8711353, at *5 (E.D.N.Y. June 23, 2016), adopted, 2016 WL 8711345 (E.D.N.Y. Sept. 30, 2016).[11]

[11] The Court would, however, be justified in reducing counsel's hourly rate on account of the various errors and omissions in petitioner's submissions. See, e.g., Ferrari v. U.S. Equities Corp., 661 F. App'x 47, 50 (2d Cir. 2016). For example, petitioner apparently quoted a different CBA from another case in describing who is responsible for the arbitrator's fee. See *supra* note 9. And, among other things, petitioner failed to identify the basis for contributions to the Industry Promotion Fund or to

With respect to costs, petitioner requests $400 for the filing fee, $40 for service through the New York Secretary of State, and $146.25 for the process server fees. See id. ¶ 22. Further, petitioner's attorney, Ms. Sigelakis, attests to having actually billed for these hours and incurring these costs, see Sigelakis Aff. ¶ 22, and proffers further proof with time records as well as receipts, see Exhibits at 82-86. These costs are reasonable.

Therefore, it is the recommendation of this Court that plaintiff be awarded $2,766.25 in fees and costs.

CONCLUSION

For the aforementioned reasons, this Court respectfully recommends that the District Court grant the Petition to confirm the arbitration award and award petitioner **$17,048.47** ($14,282.22 as awarded to petitioner by the arbitrator, plus $2,766.25 in fees and costs associated with this Petition). This Court further recommends that petitioner be awarded prejudgment interest from May 6, 2017, on $14,282.22, to be calculated by the Clerk of Court, pursuant to 28 U.S.C. § 1961, as well as post-judgment interest on $17,048.47, also calculated pursuant to section 1961. In addition, it is the recommendation of this Court that petitioner's request for an award of respondent's $1,000 portion of the arbitrator's fee be denied but that petitioner be permitted to offer evidence, by the due date for objections, that it has paid, and is therefore entitled to recover $1,000 toward, the arbitrator's fee.

Any objections to the recommendations contained herein must be filed with the Honorable Ann M. Donnelly on or before **September 24, 2018**. Failure to file objections in a

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reference and explain the fact that the arbitrator awarded $378.42 in benefits on behalf of Messrs. Fertig and Coralan that are not being sought in this case. See *supra* note 7.