UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:23-CV-23491-RAR

LUIS ALFREDO SUAREZ MAGUAL,
MOISES MAIONICA, AND
CARLOS KAUFFMANN,

Petitioners,

v.

JORGE DE JESUS AÑEZ DAGER,

Respondent.
_____/

REPORT AND RECOMMENDATIONS

THIS MATTER comes before the Court on Petitioners' Luis Alfredo Suarez Magual, Moises Maionica, and Carlos Kauffmann's (collectively, "Petitioners") Memorandum of Law in Support of their Petition to Confirm the ICC Award. (ECF No. 84). Respondent Jorge de Jesus Anez Dager filed a Response, (ECF No. 85), to which Petitioners filed a Reply, (ECF No. 86).[1] Upon review of the pleadings, the undersigned respectfully **RECOMMENDS** that the Final Judgment be **CONFIRMED**, and Petitioners be awarded pre- and post-judgment interest. It is further **RECOMMENDED** that Petitioners' request for attorneys' fees be **DENIED**, and Petitioners' request for post-judgment discovery be **GRANTED,** in part, and **DENIED**, in part.

I. BACKGROUND

On September 12, 2023, Petitioners filed their *Ex Parte* Application for Recognition, Confirmation, and Enforcement of Foreign Arbitral Award (ECF No. 1 at 1). The Final Arbitral

[1] This case was referred to the undersigned by the Honorable Rodolfo A. Ruiz, II, United States District Judge, for report and recommendations pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and the Magistrate Rules of the Local Rules of the Southern District of Florida. (ECF No. 47).

Award ("Final Award" or "Award") was issued by the International Chamber of Commerce International Court of Arbitration (the "ICC") in Miami, Florida on February 9, 2023. The arbitration concerned a shareholders' dispute between Petitioners and Respondent over Avior Airlines, a Venezuelan commercial airline company. (ECF No. 10 at 2).

On September 15, 2023, the District Court required Petitioners to provide a proposed order in which Petitioners were to "connect each request for relief to a specific finding contained in the Final Award and fully brief the legal basis for each additional request for relief not contained in the Final Award." (ECF No. 8). On September 20, 2023, Petitioners filed a Proposed Final Judgment Confirming Foreign Arbitral Award and awarding Petitioners attorneys' fees. (ECF No. 9). The proposed Final Judgment also included particular provisions from the Award. Prior to Respondent being served, the Court entered a Final Judgment confirming the Final Award, including specific findings, on September 27, 2023. (ECF No. 10).

Respondent filed a Motion for Relief from Judgment, which argued that because Final Judgment was entered before he was served with Petitioners' Application for Confirmation of the Arbitral Award, the Judgment was void and must be vacated. (ECF No. 50). Following a hearing, the undersigned recommended vacatur of the Final Judgment on the basis that Respondent had not been served (ECF No. 67); the District Court adopted the Report and Recommendation and vacated final judgment. (ECF No. 73).

Following vacatur, the undersigned entered an Order requiring Petitioners to file a memorandum of law in support of their initial Petition to confirm the Award. (ECF No. 83). Petitioners submitted their Memorandum seeking confirmation of the Final Award and requesting that the final judgment include enforcement of the same or similar provisions from the Final Award included in the now-vacated Final Judgment, as well as: pre- and post-judgment interest; an order requiring Respondent to respond to post-judgment discovery; and attorneys' fees in connection

with the confirmation proceedings. (ECF No. 84). Respondent filed a Response agreeing that the entire award should be confirmed but objecting to Petitioners' request for specific inclusion of certain provisions of the Award in the order of Final Judgment; Respondent also opposed Petitioners' request for pre- and post-judgment interest, post-judgment discovery, and attorneys' fees. (ECF No. 85). Each argument will be considered in turn.

II. DISCUSSION

A. The Entire ICC Award Should Be Confirmed

The arbitration award here is governed by the Inter-American Convention on International Commercial Arbitration (opened for signature Jan. 30, 1975, O.A.S.T.S. No. 42, 1438 U.N.T.S. 245) (the "Panama Convention" or the "Inter-American Convention"). *See* 9 U.S.C. §§ 301–307 (implementing the Panama Convention). Where, as here, the Final Award was rendered in a nation that is a signatory of the Inter-American Convention, the Final Award "is entitled to be recognized and enforced, unless an appropriate exception for non-recognition applies." *Nicor Int'l Corp. v. El Paso Corp.*, 292 F. Supp. 2d 1357, 1372 (S.D. Fla. 2003) (citing 9 U.S.C. § 304). "A district court's review of a foreign arbitration award is quite circumscribed" and "there is a general pro-enforcement bias manifested in the Convention." *Four Seasons Hotels & Resorts B.V. v. Consorcio Barr, S.A.*, 613 F. Supp. 2d 1362, 1366, 1367 (S.D. Fla. 2009) (quotations and alterations omitted).

Petitioners and Respondent all agree that the Final Award should be confirmed in its entirety. The undersigned similarly recommends that the Court enter an Order confirming the entire Final Award.

B. Final Judgment

The Parties having agreed that the Award should be confirmed in its entirety, they nevertheless dispute the form of the Court's Final Judgment.

Petitioners seek to specify, and thereby "enforce," certain provisions of the 592-page Final

Award in the Court's ultimate Final Judgment. Petitioners' proposed language is not a word-for-word replication of the Final Award's findings and orders. Rather, Petitioners have summarized certain portions of the Final Award while citing to various paragraphs therein, as follows:

1. Petitioners, LUIS ALFREDO SUAREZ MAGUAL, CARLOS KAUFFMANN, and MOISES MAIONICA, as members of the Suarez Group, hold a fifty (50%) ownership interest in Avior Airlines, C.A. ICC Award ¶¶ 635, 644, 724, 735, 736, 1485(7).

2. Petitioners', LUIS ALFREDO SUAREZ MAGUAL, CARLOS KAUFFMANN, and MOISES MAIONICA, rights as shareholders of Avior Airlines, C.A. shall be fully reinstated. ICC Award ¶¶ 728, 1254, 1485(15).

3. Respondent, JORGE DE JESUS AÑEZ DAGER, is ordered to comply with the Shareholders Agreement provided for in the Fifth Clause of the Letter of Intent and shall proceed to re-establish and respect the balance between the two ownership groups of Avior Airlines, C.A., consisting of the Añez-Folla Group and the Suarez Group., including returning Petitioners' control over Avior's legal, financial, and procurement areas. ICC Award ¶¶ 728, 1205-1254, 1485(15).

4. Respondent, JORGE DE JESUS AÑEZ DAGER, shall immediately convene a General Shareholders' Assembly of Avior Airlines, C.A. to reinstate Petitioners Luis Alfredo Suarez Magual and Jose Sulbarán Santiago to their positions on the board of directors of Avior Airlines, C.A., since they were wrongfully removed from their positions and responsibilities in the meeting held on February 6, 2019. ICC Award ¶¶ 728, 1254, 1485(15).

5. Petitioners, LUIS ALFREDO SUAREZ MAGUAL, MOISES MAIONICA, AND CARLOS KAUFFMANN, whose address is 900 Biscayne Boulevard, 10th Floor, Suite 1001, Miami, Florida 33132, shall have, receive, and recover from Respondent, JORGE DE JESUS AÑEZ DAGER, whose addresses are Avenida Luis Roche, Edificio Bronce, piso 3, Urbanización Altamira, Caracas, Venezuela, the amount of U.S. $119,086.80, which shall bear post-judgment interest at the rate set forth in 28 U.S.C. § 1961, FOR WHICH SUM LET EXECUTION ISSUE. [¶¶1485(20)(iii), ICC Award].

(ECF No. 84 at 4–5) (footnote omitted). This is a point of contention for Respondent, who argues that one of the Petitioners' summaries is not faithful to the Final Award, and the chosen provisions unfairly exclude other findings and orders in the Award. Respondent suggests that the proper form

for a Final Judgment should simply confirm the award and avoid the addition of incomplete or editorialized language purportedly picked from the Final Award.

The Court has considered Petitioners' proposed language and citations to the record together with Respondent's objections, and addresses each in turn. Ultimately, the Court makes the following recommendation for the content of the Final Judgment, which should be entered in a document separate from that which confirms the Award in its entirety, pursuant to Federal Rule of Civil Procedure 58(a). *See* Fed. R. Civ. P. 58(a) ("Every judgment and amended judgment must be set out in a separate document.").

1. **"Petitioners, LUIS ALFREDO SUAREZ MAGUAL, CARLOS KAUFFMANN, and MOISES MAIONICA, as members of the Suarez Group, hold a fifty (50%) ownership interest in Avior Airlines, C.A. ICC Award ¶¶ 635, 644, 724, 735, 736, 1485(7)."**

With respect to this provision, neither Party can agree on what the plain language of the Final Award states, relying on competing citations to the Award.

Respondent argues that Petitioners' language falsely suggests that the three Petitioners hold 50 percent ownership. *See* (ECF No. 85 at 4). Respondent cites to certain portions of the Award that he claims state that the three named Petitioners in this action collectively own only 45 percent of Avior, with a fourth member of the "Suarez Group," Juan Bracamonte—who was not a party to the arbitration and is not a party to this action—owning the remaining 5 percent. Petitioners argue on Reply that the Suarez Group is a group of shareholders who together own a 50 percent interest in Avior; Petitioners here are three of the four members of the Suarez Group, with Mr. Suarez holding the Group's ownership interest on each member's behalf. Petitioners argue that the ICC Award did not make any findings regarding the respective ownership interests of members within the Suarez Group, but acknowledge the Suarez Group's collective ownership of Avior.

In support of his position, Respondent cites to a definition within the "Defined Terms"

section of the Final Award; specifically, the Tribunal defines the term "Conflict Waiver and Confidentiality Agreement" as an agreement in which the signatories expressly stated that:

> The mediation refers to possible conflicts between the shareholders of Avior Airlines, C.A., which are represented by the following people: Jorge Añez represents 50%, Carlos Kauffmann represents 35%, Moisés Maionica represents 5%, Luis Suarez represents 5%, and Juan Bracamonte represents 5%, which add up to 100% of all Avior shares.

(ECF No. 1-2 at 7)[2]; (ECF No. 85 at 8–9). In all but one of Respondent's other citations, the Tribunal quotes this provision from the "Conflict Waiver and Confidentiality Agreement," or describes the members of the Suarez Group, without making a finding. *See* (ECF No. 85 at 8–9); (ECF No. 1-2 at ¶¶ 277, 556(ii), 648). Respondent's final citation to paragraph 1088 of the Final Award, however, is most instructive. There, the Tribunal in making findings on Mr. Bracamonte's credibility, "did not disregard" that he "is the holder of five percent (5%) of shareholding within Suarez Group (as expressly stipulated in the Conflict Waiver and his own statements)." (ECF No. 1-2 at ¶ 1088) (footnote omitted). Beyond the Tribunal's assumptions regarding the Conflict Waiver and Confidentiality Agreement, Respondent cites to no portions of the Award in which the Tribunal made an express finding regarding Bracamonte's shares in Avior Airlines, C.A.

Petitioners, for their part, cite to provisions of the Final Award in which the Tribunal found that "the so-called Grupo Suarez" (the Suarez Group) owned "the remaining fifty percent (50%) of Avior shares." (ECF No. 1-2 at ¶ 635); (ECF No. 1-2 at ¶¶, 644, 724, 735).

Petitioners' citations do not *verbatim* state that they *as individuals* hold 50 percent ownership shares as stated in Petitioners' summary. And "confirmation under the Convention is a summary proceeding in nature, which is not intended to involve complex factual determinations,

[2] Where citations to the Final Award, (ECF No. 1-2), are not preceded by a Paragraph symbol (¶) herein, the undersigned cites pages in which paragraphs are not numbered. For instance, page seven of the Final Award cited here pertains to the Final Award's defined terms, which are not organized in numbered paragraphs.

other than a determination of the limited statutory conditions for confirmations or grounds for refusal to confirm." *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007). Therefore, the Court should decline to incorporate in its judgment Petitioners' summary, as phrased. Still, the record supports (and Respondent's citations do not dispute) that the Suarez Group was found to hold a 50 percent ownership interest in Avior Airlines, and the Tribunal did not ultimately resolve who among the Suarez Group held what quantity of shares. Therefore, I recommend that the Court include in its Final Judgment: "The Suarez Group—which is defined on page 19 in the Final Award as a '[g]roup made up of Messrs. Kauffmann, Maionica, Suarez, and Bracamonte'—holds 50 percent ownership interest in Avior Airlines, C.A. *See* (ECF No. 1-2 at 19)."

> **2. "Petitioners', LUIS ALFREDO SUAREZ MAGUAL, CARLOS KAUFFMANN, and MOISES MAIONICA, rights as shareholders of Avior Airlines, C.A. shall be fully reinstated. ICC Award ¶¶ 728, 1254, 1485(15)."**

Although Respondent did not assert objections to this language, the Court has reviewed Petitioners' citations to the Final Award to confirm whether the summary is faithful to the cited provisions. Specifically, in paragraph 1485(15), the Tribunal "accepts the claim of the Claimants and orders the Respondent to comply with the Shareholders' Agreement provided for in the Fifth Clause of the Letter of Intent and orders the full reinstatement of the Claimants' rights as shareholders of Avior." (ECF No. 1-2 at ¶ 1485(15)).

Based on paragraph 1485(15), the Court finds that Petitioners' proposed language is accurate and should be included in the Court's Final Judgment.

> **3. "Respondent, JORGE DE JESUS AÑEZ DAGER, is ordered to comply with the Shareholders Agreement provided for in the Fifth Clause of the Letter of Intent and shall proceed to re-establish and respect the balance between the two ownership groups of Avior Airlines, C.A., consisting of the Añez-Folla Group and the Suarez Group., including returning Petitioners' control over Avior's legal, financial, and procurement areas. ICC Award ¶¶ 728, 1205-1254, 1485(15)."**

Respondent did not assert specific objections to the language. Based on the Court's review of paragraphs 1254 and 1485(15), the language requiring Respondent to comply with the Shareholders' agreement and respect the balance between the two corporate ownership groups is accurate. Further, the Tribunal described the "balance" as Petitioners having "essentially had control over the legal, financial, and procurement areas of Avior, leaving the operational and logistical matters to the Respondent." (ECF No. 1-2 at ¶ 1213). Accordingly, the Court should include the proposed language above in its Final Judgment as well.

> **4**. "**Respondent, JORGE DE JESUS AÑEZ DAGER, shall immediately convene a General Shareholders' Assembly of Avior Airlines, C.A. to reinstate Petitioners Luis Alfredo Suarez Magual and Jose Sulbarán Santiago to their positions on the board of directors of Avior Airlines, C.A., since they were wrongfully removed from their positions and responsibilities in the meeting held on February 6, 2019. ICC Award ¶¶ 728, 1254, 1485(15)."**

Respondent also did not specifically object to this language. The record reflects that the Tribunal indeed found that Mr. Suarez Magual and Mr. Sulbaran were removed from their positions on the board of directors on February 6, 2019. *See* (ECF No. 1-2 at ¶ 728). Additionally, the Tribunal ordered Respondent to "immediately convene a General Shareholders' Assembly to reinstate those who were removed from their positions" during the February 6, 2019 meeting. (*Id.* at ¶ 1254). Thus, Petitioners' proposed language is accurate and should likewise be included in the Court's Final Judgment.

> 5. "**Petitioners, LUIS ALFREDO SUAREZ MAGUAL, MOISES MAIONICA, AND CARLOS KAUFFMANN, whose address is 900 Biscayne Boulevard, 10th Floor, Suite 1001, Miami, Florida 33132, shall have, receive, and recover from Respondent, JORGE DE JESUS AÑEZ DAGER, whose addresses are Avenida Luis Roche, Edificio Bronce, piso 3, Urbanización Altamira, Caracas, Venezuela, the amount of U.S. $119,086.80, which shall bear post-judgment interest at the rate set forth in 28 U.S.C. § 1961, FOR WHICH SUM LET EXECUTION ISSUE. [¶¶1485(20)(iii), ICC Award].**"

Turning first to the money judgment, Respondent does not dispute that this accurately reflects the Award. Review of Petitioners' citation to the Final Award demonstrates that the Tribunal ordered that "Respondent . . . pay the Claimants One Hundred Nineteen Thousand Eighty-six and 80/100 Cents United States Dollars (US$ 119,086.80)." (ECF No. 1-2 at ¶ 1485(20)(iii)).

While Respondent did not assert specific objections to the Caracas address in Petitioners' most recent proposed language,[3] his Response cites to an affidavit in which Respondent provides a different Venezuela address: "Avenida Americo Vespucio, residencias Francisqui, Apartamento 41B." (ECF No. 49-2 at ¶ 2).

Although Petitioners did not cite to the Final Award as a source for Respondent's address, the Final Award provided that Respondent "is a natural person domiciled for these purposes at Avenida Luis Roche, Edificio Bronce, piso 3, Urbanización Altamira, Caracas, Venezuela"—the address provided in Petitioners' proposed language. (ECF No. 1-2 at ¶ 3).

Notwithstanding, Petitioners have not established why either of the Parties' addresses are material to enforcement of the Award in this Final Judgment. The Court should decline to include the addresses of the Parties in the Final Judgment.

6. Exclusion of "Unfavorable Legal Findings" in the Proposed Final Award.

[3] Respondent in his Response instead accuses Petitioners of having misrepresented that Respondent was domiciled in Florida in prior proposed judgments and pleadings, but there being no such allegations of Florida residency at issue in the present proposed Final Judgment, this argument is impertinent.

Respondent also argues that Petitioners have omitted some of the Award's "unfavorable legal findings" and, as a result, entry of Petitioners' proposed Final Judgment would result in a modification of the Award. (ECF No. 85 at 8) (citing (ECF No. 58 at 6–9)). Respondent does not propose alternative language to include in the Final Judgment, but reiterates his insistence that the entire Award be incorporated in this Court's Final Judgment.

Respondent has previously taken issue with the exclusion of the Tribunal's order that Petitioners pay certain costs and fees to non-parties (Ms. Beatriz Folla and Grupo Añez Folla C.A.) for the underlying arbitration. *See* (ECF No. 1-2 at ¶¶ 1485(20)(iv), (v)). Respondent argues that the omission of this provision of the Award from the Final Judgment is the equivalent to modifying the Award. In support, Respondent relies on *EGI-VSR, LLC v. Coderch Mitjans*, 963 F.3d 1112 (11th Cir. 2020). There the underlying arbitration award ordered specific performance of a sale of shares in exchange for a price based on the arbitrator's calculations. The petitioner provided the district court with a proposed judgment that directed the respondent to pay the calculated sum, but did not include the award's order requiring an exchange of the shares in consideration therefor. *Id.* at 1119 n.6. The District Court confirmed the award as requested by the petitioner and entered a judgment requiring the respondent to pay the calculated sum as a money judgment. The Eleventh Circuit reversed, reasoning that the judgment requiring payment as calculated by the petitioner—without the sale and transfer of the shares—modified the arbitrator's award from one for specific performance to a money judgment, thereby only enforcing "half of the award." *See id*. at 1124.

By contrast, the Final Award in this matter did not impose reciprocal duties on the Parties to this confirmation proceeding. Where in *EGI-VSR*, the Parties' obligation required an exchange of performances, here, Respondent's obligations to Petitioners under the Final Award are not dependent on Petitioners' obligation to pay Ms. Folla or Grupo Añez Folla C.A.

Moreover, the Final Award is due to be confirmed in its entirety and all portions thereof remain enforceable. As to the named Parties in this proceeding, the Court may enter a Final Judgment by separate order under Rule 58 setting forth their rights and obligations without prejudice to the rights of the non-partes, Ms. Folla or Grupo Añez Folla C.A., to seek execution of their rights under the Final Award. The Final Judgment's articulation of the obligations between the Petitioners and Respondent does not therefore act as a modification.

C. Prejudgment Interest

Petitioners seek an award of prejudgment interest to the ICC's award of $119,086.80. *See* (ECF No. 1-2 at ¶ 1485(20)(iii)) (ruling that Añez must reimburse the Claimants for arbitration expenses of $119,086.80).

Because this case arises under federal subject matter jurisdiction by virtue of 9 U.S.C. section 203, the issue of prejudgment interest is governed by federal law. *See* 9 U.S.C. § 203 ("An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States."); *see also Vaden v. Discover Bank*, 556 U.S. 49, 65 n.15 (2009) (observing that 9 U.S.C. sections 203 and 205 provide for "federal-court jurisdiction over arbitration agreements covered by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards"). There is no federal statute governing awards of prejudgment interest on arbitral awards; rather, awards of prejudgment interest "are equitable remedies, to be awarded or not awarded in the district court's sound discretion." *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1446 (11th Cir. 1998), *overruled on other grounds by Corporacion AIC, SA v. Hidroelectrica Santa Rita S.A.*, 66 F.4th 876 (11th Cir. 2023). In the Eleventh Circuit, "absent any reason to the contrary, [prejudgment interest] should normally be awarded when damages have been liquidated by an international arbitral award." *Id.* Here, the Tribunal indisputably issued an award of liquidated damages for expenses incurred during the

arbitration. The question, now, is whether the Court should use its discretion in this instance to award post-award, prejudgment interest.

Respondent maintains that an award of prejudgment interest would be unjust because the Tribunal expressly declined to include any interest in its Final Award. Specifically, Petitioners sought in connection with their breach of contract claim to "[o]rder [Jorge de Jesus Añez] to pay the applicable interest on the sale price due, accrued on dates prior and subsequent to the arbitration award rendered in these arbitration proceedings, until the effective date of payment." (ECF No. 1-2 at ¶ 284(7)). Respondent directs the Court to the Final Award, which did not include an award of interest and rejected "any other claim." (ECF No. 1-2 at ¶ 1485 (21)). Petitioners respond that the Tribunal did not consider the issue of interest because at the award level Petitioners only sought interest in connection with any award for Petitioners' breach of contract claim. However, the Tribunal rejected the breach of contract claim and issued no monetary award arising therefrom. *See* (ECF No. 1-2 at ¶ 1485(14)).

Respondent's argument here is not supported by the language of the Final Award. Although the Tribunal made a finding regarding Petitioners' breach of contract claim, Respondent cites to no portion of the Award which either indicates that Petitioners sought interest in connection with the award of expenses or that the Tribunal rejected any such claim. Therefore, on the present record, the Court at its discretion may award prejudgment interest without disturbing the Tribunal's findings. *Cf. Oriental Republic of Uruguay v. Italba Corp.*, 606 F. Supp. 3d 1250, 1261 (S.D. Fla. 2022) (finding tribunal already determined entitlement to prejudgment interest where award specifically denied a claimant's request for interest on an award of costs).

Notwithstanding, the Court must next consider whether to use its discretion here "in response to considerations of fairness." *United Steel, Paper & Forestry, Rubber Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union AFL-CIO-CLC v. Smurfit-Stone Container Corp.*, 479

F. App'x 250, 255 (11th Cir. 2012).

Petitioners submit that prejudgment interest is appropriate in light of the time elapsed since entry of the Final Award and to account for inflation. Respondent responds that Petitioners had not demonstrated any attempts to enforce the Final Award and collect judgment in Venezuela between entry of the Final Award and commencement of these proceedings; Respondent also argues that Petitioners are responsible for the additional delays caused by their attempts at proceeding in this action *ex parte*.

The undersigned agrees with Petitioners that prejudgment interest is appropriate here.[4] Although Respondent blames Petitioners for the time between entry of the Final Award and entry of the Final Judgment, Respondent has failed to comply with the Final Award in the interim. Accordingly, the Court should exercise its discretion and award prejudgment interest on the Tribunal's award of $119,086.80.

The inquiry does not end there; the Court must next determine the rate at which to award prejudgment interest, which is also a matter of discretion. *See Indus. Risk Insurers*, 141 F.3d at 1447. "That choice is usually guided by principles of reasonableness and fairness, by relevant state law, and by the relevant fifty-two-week United States Treasury bond rate, which is the rate that federal courts must use in awarding *post*-judgment interest." *Id*. (emphasis in original); *see* 28 U.S.C. § 1961. Petitioners request an award of prejudgment interest at "the statutory rate," (ECF No. 84 at 11),[5] but submits that the average prime rate would also be appropriate here. Petitioners also do not state whether their request for prejudgment interest should be simple or compounded. Respondent does not propose an alternative rate.

[4] Petitioners also argue that prejudgment interest should be awarded in light of Respondent's "wrongful conduct" during the arbitration. (ECF No. 84 at 12). However, "prejudgment interest is not a penalty." *Indus. Risk Insurers*, 141 F.3d at 1446.

[5] Although Petitioners do not specify what statute, the Court presumes Petitioners refer to the federal statutory rate for post-judgment interest in 28 U.S.C. § 1961, as they otherwise rely on that statute throughout their briefing.

Prejudgment interest should be calculated from the date of the Final Arbitral Award to the date of the Court's judgment. *See Sequip Participacoes S.A. v. Marinho*, No. 15-23737-MC, 2019 WL 8301064, at *7 (S.D. Fla. Feb. 26, 2019). The Final Award here was issued on February 9, 2023. The applicable rate under 28 U.S.C. § 1961(a) for the week prior to entry of the Final Award was 4.82 percent.[6] Section 1961 further orders that post-judgment interest should be compounded annually but provides no guidance on whether prejudgment interest rates should be similarly compounded. On the other hand, the average prime rate between 2023 to the present was 7.38 percent.

In light of Petitioners' request for the lower of the two interest rates and in the absence of argument that the interest rate should be compounded, the Court finds that the simple interest rate of 4.82 percent is most reasonable here.

Accordingly, Petitioners should be awarded prejudgment interest at a simple rate of 4.82 percent.

D. Post-Judgment Interest

Petitioners also request that the Final Judgment include an award of post-judgment interest. To that end, Petitioners further request that any award of post-judgment interest be calculated to include the award of prejudgment interest as well.

Respondent argues that, in declining to award interest, the Tribunal has spoken on Petitioners' entitlement to post-judgment interest. However, as set forth above, the Court has already found that the Tribunal's Award is silent on Petitioners' entitlement to interest on its award

[6] The Court calculated the average rate for the week prior to February 9, 2023, using data from the Board of Governors of the Federal Reserve System. *See* 28 U.S.C. § 1961(a) (post-judgment interest "shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding[ ] the date of the judgment."); *see also* Board of Governors of the Federal Reserve System, *Selected Interest Rates Data Download Program*, https://www.federalreserve.gov/datadownload/Choose.aspx?rel=H15 (last visited November 10, 2025).

of costs. Respondent also argues that the cases on which Petitioners rely are distinguishable because they concern tribunal awards which expressly awarded interest up to date of payment. While it is true that some cases on which Petitioners rely discuss arbitral awards including payment of interest,[7] courts have otherwise awarded post-judgment interest in the absence of such awards. *See, e.g.*, *Sequip Participações*, 2019 WL 8301064, at *7–8; *Khan v. Stiffel*, No. 10-81232-MC, 2011 WL 2078526, at *2 (S.D. Fla. Apr. 18, 2011), *report and recommendation adopted*, 2011 WL 2039067 (S.D. Fla. May 25, 2011).

Under 9 U.S.C. § 13, "a judgment entered by a federal court confirming, modifying, or correcting an arbitration award shall have the same force and effect, in all respects, as, and be subject to all provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered." *Parsons & Whittemore Ala. Mach. & Servs. Corp. v. Yeargin Const. Co.*, 744 F.2d 1482, 1484 (11th Cir. 1984) (internal quotation marks omitted). Therefore, once a court enters its judgment affirming an arbitral award, the court is "governed by statutory post-judgment interest rates." *Id.*; *see also Sequip Participações S.A.*, 2019 WL 8301064, at *4 (awarding post-judgment interest on the judgment of a foreign arbitration award confirmation). Having determined that post-judgment interest applies to arbitral awards confirmed by the district court, 28 U.S.C. section 1961(a) provides that, "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a). Therefore, Petitioners should be awarded post-judgment interest accrued from the date of entry of Final Judgment through Respondent's payment under 28 U.S.C. section 1961(a).

However, the Court should decline to award interest incurred on the prejudgment interest recommended herein. "Because prejudgment interest serves only to compensate the plaintiff for

[7] *See Am. Steel Trade Corp. v. Metalhouse, LLC.*, No. 22-cv-915, 2022 WL 17370389, at *4 (M.D. Fla. Nov. 17, 2022); *Merit Ins. Co. v. Leatherby Ins. Co.*, 728 F.2d 943, 945 (7th Cir.1984).

the deprivation of the use of the principal loss amount for a set period of time—from the date of loss to judgment—such compensation is fixed at the time of judgment." *Becker Holding Corp. v. Becker*, 78 F.3d 514, 517 (11th Cir. 1996). Thus, ordering post-judgment interest on top of prejudgment interest "would overcompensate for the deprivation." *Id.*

Accordingly, Petitioners should be awarded post-judgment interest on the principal of $119,086.80 in accordance with 28 U.S.C. section 1961(a) from the date of Final Judgment, to the date of satisfaction.

E. Post-Judgment Discovery

Petitioners further request that any judgment confirming the Award also require Respondent to "complete a Fact Information Sheet and take part in post-judgment discovery, as required by Florida Rule of Civil Procedure 1.560(c) and Federal Rule of Civil Procedure 69." Respondent replies that Petitioners' request is premature as no final judgment has yet been entered.

Federal Rule of Civil Procedure 69(a)(2) provides that "[i]n aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." Fed. R. Civ. P. 69(a)(2). "Under Rule 69, the Court looks both to the Federal Rules of Civil Procedure and the Florida Rules of Civil Procedure." *Pronman v. Styles*, No. 12-80674-CIV, 2016 WL 4618087, at *2 (S.D. Fla. Aug. 19, 2016). The Florida procedure is set forth in Florida Rule of Civil Procedure 1.560, which provides, in pertinent part:

> In addition to any other discovery available to a judgment creditor under this rule, the court, at the request of the judgment creditor, shall order the judgment debtor or debtors to complete form 1.977, including all required attachments, within 45 days of the order or such other reasonable time as determined by the court. Failure to obey the order may be considered contempt of court.

Fla. R. Civ. P. 1.560(b).

The Court recommends that Respondent be ordered to complete the Fact Information Sheet in accordance with Florida Rule of Civil Procedure 1.560(b). However, Petitioners' request that Respondent be ordered to "take part in post-judgment discovery" is premature. To be sure, Petitioners' request stops short of one to *compel* discovery under Federal Rule of Civil Procedure 69 or the Florida Rules of Civil Procedure. Rather, Petitioners' Memorandum asks that the Court include in its Final Judgment an admonishment that the Respondents respond to post-judgment discovery requests. Petitioners' request is not yet ripe. If, after the District Court enters a final judgment, Petitioners require court intervention to effectuate post-judgment discovery, they may employ the mechanisms of the Rules of Civil Procedure and the Local Rules.

F. Attorneys' Fees

Finally, Petitioners seek reasonable attorneys' fees and costs incurred in this proceeding to confirm the ICC Award. In support, Petitioners argue that Respondent demonstrated bad faith in his refusal to abide by the ICC award. Petitioners also argue that Respondent "vexatiously litigated this case" by seeking vacatur of the previously entered Final Judgment. (ECF No. 84 at 14).

The Eleventh Circuit has warned that parties who "attempt to salvage arbitration losses through litigation that has no sound basis in the law applicable to arbitration awards"—by, for instance, asserting frivolous challenges to arbitration awards—will be subject to sanctions in appropriate cases. *B.L. Harbert Int'l, LLC v. Hercules Steel Co.,* 441 F.3d 905, 914 (11th Cir. 2006), *abrogated on other grounds by Frazier v. CitiFinancial Corp., LLC,* 604 F.3d 1313, 1321 (11th Cir. 2010).

At the outset, having presided over and entered a Report and Recommendations on Respondent's efforts to vacate the Final Judgment, the undersigned does not find that Respondent's actions were baseless. Respondent's successful efforts to vacate the award on the basis of non-service were neither frivolous nor non-meritorious. Turning to Respondent's actions

outside this litigation, Petitioners rely on the Tribunal's findings regarding Respondent's "reproachable" conduct during the arbitration proceedings to support attorneys' fees incurred here. Review of the Award confirms that, indeed, the Tribunal "deem[ed] it appropriate for the Respondent to reimburse thirty percent (30%) of the total expenses reported by the Claimants for their defense." (ECF No. 1-2 at ¶ 1467). However, given that the entire Final Award is due to be confirmed, Petitioners will already be reimbursed for Respondent's behavior during the arbitration proceeding.

Petitioners also argue that the Respondent's failure to yet comply with the Final Award forms a basis for a finding of bad faith. *See* (ECF No. 84 at 15) ("The sole reason for Añez's refusal to respect Petitioners' rights as shareholders, reinstate them into Avior, and comply with the ICC Award is to keep Petitioners shut out of Avior. This is oppressive behavior and shows Añez's clear disregard for Petitioners' property and shareholders' rights."). Petitioners rely on a Ninth Circuit case which agreed with other circuits in finding that "an unjustified refusal to abide by an arbitrator's award may equate an act taken in bad faith, vexatiously, or for oppressive reasons." *Int'l Union of Petroleum & Indus. Workers v. W. Indus. Maint., Inc.*, 707 F.2d 425, 428 (9th Cir. 1983) (compiling cases). However, the case before the Ninth Circuit—and those before other circuits with which the Ninth Circuit agreed—are distinguishable insofar as they concerned union-specific arbitration awards. Indeed, in awarding fees, the Ninth Circuit reasoned that, "it is generally recognized that *labor arbitration* advances the goal of industrial stabilization," and, therefore, "[e]ngaging in frivolous dilatory tactics not only denies the individual prompt redress, it threatens the goal of industrial peace." *Id.* (emphases added). The present case does not present the same policy concerns as those before the Ninth Circuit. An award of attorneys' fees is not warranted here.

III. RECOMMENDATIONS

For the foregoing reasons, the undersigned respectfully **RECOMMENDS** that the District Court confirm the Final Award without modification and, by separate order pursuant to Federal Rule of Civil Procedure 58, issue a Final Judgment awarding Petitioners prejudgment and post-judgment interest and containing the following provisions:

1. The Suarez Group—which is defined on page 19 in the Final Award as a "[g]roup made up of Messrs. Kauffmann, Maionica, Suarez, and Bracamonte"—holds 50 percent ownership interest in Avior Airlines, C.A. *See* (ECF No. 1-2 at 19).

2. Petitioners' rights as shareholders of Avior Airlines, C.A. shall be fully reinstated. ICC Award ¶¶ 728, 1254, 1485(15).

3. Respondent, JORGE DE JESUS AÑEZ DAGER, is ordered to comply with the Shareholders Agreement provided for in the Fifth Clause of the Letter of Intent and shall proceed to re-establish and respect the balance between the two ownership groups of Avior Airlines, C.A., consisting of the Añez-Folla Group and the Suarez Group., including returning Petitioners' control over Avior's legal, financial, and procurement areas. ICC Award ¶¶ 728, 1205-1254, 1485(15).

4. Respondent, JORGE DE JESUS AÑEZ DAGER, shall immediately convene a General Shareholders' Assembly of Avior Airlines, C.A. to reinstate Petitioners Luis Alfredo Suarez Magual and Jose Sulbarán Santiago to their positions on the board of directors of Avior Airlines, C.A., since they were wrongfully removed from their positions and responsibilities in the meeting held on February 6, 2019. ICC Award ¶¶ 728, 1254, 1485(15).

5. Petitioners, LUIS ALFREDO SUAREZ MAGUAL, MOISES MAIONICA, AND CARLOS KAUFFMANN, shall have, receive, and recover from Respondent, JORGE DE JESUS AÑEZ DAGER, the amount of U.S. $119,086.80, which shall bear prejudgment interest at the rate of 4.82 percent, and post-judgment interest at the rate set forth in 28 U.S.C. § 1961, FOR WHICH SUM LET EXECUTION ISSUE. [¶¶1485(20)(iii), ICC Award].

It is further **RECOMMENDED** that Petitioners' request for attorneys' fees be **DENIED**; Petitioners' request for post-judgment discovery be **GRANTED, in part**, insofar as they seek an

order requiring Respondent to complete the Fact Information Sheet per Florida Rule of Civil Procedure 1.560(b), and **DENIED, in part**, at to the remainder of the request as premature.

A party shall serve and file written objections, if any, to this Report and Recommendation with the Honorable Rodolfo A. Ruiz, II, United States District Judge, within **FOURTEEN** (14) days of being served with a copy of this Report and Recommendation. Failure to timely file objections will bar a *de novo* determination by the District Judge of anything in this recommendation and shall constitute a waiver of a party's "right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions." 11th Cir. R. 3-1 (2016); 28 U.S.C. § 636(b)(1)(C); *see also Harrigan v. Metro-Dade Police Dep't Station #4*, 977 F.3d 1185, 1191–92 (11th Cir. 2020).

RESPECTFULLY SUBMITTED in Chambers, in Miami, Florida this 10th day of November, 2025.

LAUREN F. LOUIS
UNITED STATES MAGISTRATE JUDGE