

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 14-cv-00275-RM-MJW

MORGAN STANLEY SMITH BARNEY LLC, and
MORGAN STANLEY SMITH BARNEY FA NOTES HOLDINGS LLC,

Petitioners,

v.

LEOPOLD T. MONACO a/k/a LEOPOLD THOMAS MONACO,

Respondent.

**ORDER ON RECOMMENDATION
ON PETITION TO CONFIRM ARBITRATION AWARD (ECF NO. 15)**

THIS MATTER is before the Court on Magistrate Judge Michael J. Watanabe's Recommendation on Petition to Confirm Arbitration Award (ECF No. 15) dated August 26, 2014, recommending Petitioners' Petition to Confirm Arbitration Award (ECF No. 1) be granted, that judgment be entered in favor of Petitioners in accordance with the award, and that attorneys' fees and costs be awarded. The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

The Recommendation advised the parties that specific written objections were due within fourteen days after being served with the Recommendation. (ECF No. 15, page 6.) The time permitted for any objections has expired and no objections to the Recommendation have been filed.

The Court has reviewed the Recommendation and relevant materials. The Recommendation found the elements required for confirming the award have been met, *i.e.*, an

agreement to binding arbitration, a timely petition to confirm the award, the service of the petition on the adverse party, and the filing of the petition in an appropriate court. On review, the Court finds that the award was made on May 30, 2013, instead of May 20, 2013, but nonetheless agrees the Petition was timely filed. In addition, the Court finds the award is to run from February 15, 2010, and the attorneys' fees and costs awarded in arbitration total \$23,873.00¹ rather than \$25,273.00. The Court concludes that the Magistrate Judge's analysis was otherwise thorough and sound, with no clear error of law or abuse of discretion. *See* Fed. R. Civ. P. 72(b) advisory committee's note ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."); *see also Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("In the absence of timely objection, the district court may review a magistrate's report under any standard it deems appropriate.").

In accordance with the foregoing, the Court **ORDERS** as follows:

1. That the Magistrate Judge's Recommendation on Petition to Confirm Arbitration Award (ECF No. 15), as modified herein, is **ADOPTED** in its entirety as an order of this Court;
2. That the Petitioners' Petition to Confirm Arbitration Award (ECF No. 1) is **GRANTED**;
3. That the Clerk of the Court shall enter judgment in favor of Petitioners Morgan Stanley Smith Barney LLC and Morgan Stanley Smith Barney FA Notes Holdings LLC, and against Respondent Leopold T. Monaco a/k/a Leopold

¹\$22,873.00 in attorneys' fees and costs, plus \$1,000.00 as reimbursement for the non-refundable portion of Petitioners' initial claim filing fee. (ECF No. 1-7, pages 6, 7.)

Thomas Monaco, in the amount of \$471,611.00,² with 9.25% simple interest per annum accruing from February 15, 2010 until the date judgment is entered, plus arbitration attorneys' fees and costs in the amount of \$23,873.00;

4. That Petitioners shall be awarded their reasonable and necessary attorneys' fees incurred in connection with the Petition, as provided for under the terms of the Promissory Note. Within 14 days of the date of this Order, Petitioners shall submit a motion for attorneys' fees supported by affidavit in accordance with D.C.COLO.LCivR 54.3;
5. That Petitioners are awarded their costs and shall within 14 days of the date of this Order file a bill of costs, in accordance with the procedures under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1, which shall be taxed by the Clerk of the Court; and
6. That post-judgment interest under 28 U.S.C. § 1961 shall accrue from the date that judgment is entered until the judgment is paid in full.

DATED this 21st day of October, 2014.

BY THE COURT:



RAYMOND P. MOORE
United States District Judge

² The Recommendation inadvertently stated the principal amount was \$471,661.00.