

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**NEW JERSEY BUILDING LABORERS
STATEWIDE BENEFIT FUNDS AND THE
TRUSTEES THEREOF**
Petitioner,

v.

DEMCO INC.,

Respondent.

Civ. No. 2:15-2919 (KM)(JBC)

OPINION

The Petitioner asks the Court to confirm an arbitration award originally entered on consent. The Petitioner further requests that I enter judgment against the Respondent, as authorized by the award, because Respondent has failed to comply with its terms. I will confirm the award and enter judgment against the Respondent. My calculation of the amount of the judgment, however, differs from that of the Petitioners.

Background & Discussion

Respondent Demco, Inc., is a construction Company. According to the Petitioner, Demco entered into a collective bargaining agreement with a labor union. Pursuant to that agreement, Demco was to make contributions to a fund that provided fringe benefits to union members. That fund, the New Jersey Building Laborers Statewide Benefit Funds and the Trustees Thereof (the “Fund”), is the Petitioner here. The Fund brought a case in arbitration, alleging that Demco failed to make its fringe benefit contributions during the period March 1, 2014 through January 10, 2015. (Award,¹ ¶ 1) To resolve this issue, Demco and the Fund entered into a consent award before the arbitrator.

¹ Citations to the record will be abbreviated as follows:

“Award” – Consent Arbitration Award and Order, Dkt. No. 1, Exh. D.

“Petition” – Petition to Confirm Arbitration Award, Dkt. No. 1.

Pursuant to the terms of that award, Demco was to make monthly payments of approximately \$24,000 for a period of some nineteen months, eventually paying to the Fund a total of \$457,453.15. (Award, 7) The consent arbitration award further provided that if Demco defaulted on its payments, the Fund could petition a district court to confirm the arbitration award and enter judgment in favor of the Fund against Demco. (Award, ¶ 6)

According to the Petitioners, Demco has defaulted on its monthly payment obligation. The Petition alleges that Demco made its first three payments as scheduled, but has since ceased making payments. (Petition, ¶ 10) The Fund therefore asks this Court to confirm the arbitration award and enter judgment against Demco. Demco has not entered an appearance or otherwise defended itself. I will therefore treat the Fund's factual actual allegation as unopposed, and assume its truth. A judgment in favor of the Fund is therefore appropriate.

I next consider the calculation of the amount of the judgment. The consent arbitration award included a finding that Demco was delinquent in the amount of \$375,240.60 in benefit contributions, and owed "fees" of some \$140,251.10, for a total liability of \$515,491.70. (Award, ¶ 1) The parties agreed, however, to a compromise amount of \$424,784.74. (Award, ¶ 1) The Fund agreed to repay that amount, plus interest at the annual rate of 9% compounded monthly, over the course of nineteen months. (Award, ¶ 1 and page 7) If Demco made all payments as scheduled, Demco would eventually pay a total of \$457,453.15 (the stipulated delinquency amount of \$424,784.74 plus interest of \$32,668.41) (Award, 7)

Demco made the first three scheduled payments of \$24,000 each, a total of \$72,000. (Petition, ¶ 10) According to the schedule of payments attached to the arbitration award, after making these three payments Demco owed \$361,872.91 in principal. (Award, 7) Demco would additionally be charged interest at a rate of 9% per annum compounded monthly. *Id.* Under those terms, the amount that Demco would owe on April 22, 2015 (the date the Petition was signed, see Petition, 4) would be \$363,589.45. ($361,872.91 \times$

$(1+0.0075)^{(19/30)} = \$363,589.45$).² That, plus the filing fee of \$400.00 would yield a total liability of \$363,989.45.

The Fund suggests that Demco owes it quite a bit more: \$421,397.40 (Petition, ¶ 11 and page 4) The Fund, however, does not explain how it arrived at this figure. The basis for it is not apparent from the arbitration award or the Fund's recitation of the facts in its Petition.

I will therefore enter a judgment for the delinquency amount of \$363,989.45. This includes the \$363,589.45 due per the arbitration award, plus the \$400 filing fee paid to this Court, consistent with Article 15.30(c) of the Collective Bargaining Agreement. (Dkt. No. 1, Exh. A)

Conclusion

I will confirm the consent arbitration award and enter judgment for the Petitioner. A separate order will issue.

Dated: August 3, 2015
Newark, New Jersey


Kevin McNulty
United States District Judge

² This calculation uses the formula Amount Due = $P \times (1+i)^t$

Where

P = the principal, here \$361,872.91

i = the interest rate per period, here 0.75% per month (9% per year divided by 12)

t = the time period that the payment was outstanding, here 19 days (or 0.633 months)