

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/26/2017

----- X
:
TRUSTEES OF THE NEW YORK CITY :
DISTRICT COUNCIL OF CARPENTERS :
PENSION FUND, et al., :
Petitioners, :
:
-against- :
:
MDH FLOOR COVERING, LLC, :
Respondent. :
----- X

17 Civ. 398 (LGS)

OPINION AND ORDER

LORNA G. SCHOFIELD, District Judge:

Petitioners Trustees of the New York City District Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund, and Apprenticeship, Journeyman Retraining, Educational and Industry Fund; Trustees of the New York City Carpenters Relief and Charity Fund; The New York City and Vicinity Carpenters Labor-Management Corporation (“the Funds”) and New York City District Council of Carpenters petition for confirmation of a favorable arbitration award issued August 23, 2016 (the “Award”), along with attorneys’ fees and costs. Respondent MDH Floor Covering, LLC (“MDH”) does not oppose the petition. For the following reasons, the petition is granted.

I. BACKGROUND

The following uncontested facts are taken from the Award, evidence submitted to the arbitrator and evidence submitted in support of the petition.

Pursuant to a collective bargaining agreement, MDH agreed to make benefit funds contributions to the Funds. MDH also agreed to make its books and payroll records available to the Funds to ensure compliance with the contribution requirements. In the event of employer contribution delinquencies, the agreement provides that the Funds may elect to file a lawsuit or

pursue arbitration to collect any monies owed to them. The agreement further provides that if the Funds successfully obtain a judgment in a court of competent jurisdiction, MDH is responsible for paying the amount of any unpaid contributions, interest on the contributions and reasonable attorneys' fees and costs. If the Funds instead opt for arbitration, the agreement empowers the arbitrator to "decide any and all issues raised by [a party's] submission and to fashion an appropriate remedy," including awarding monetary damages and interest on the unpaid contributions.

According to an audit of MDH contribution records, MDH failed to make required benefit contributions to the Funds for the period between July 1, 2013, and December 28, 2014. On or about November 6, 2015, the Funds notified MDH of their intent to pursue arbitration as a result of the delinquent contributions. Subsequently, the Funds undertook another review of MDH contribution records, and determined that MDH also failed to make required contributions for the period between December 29, 2014, and December 31, 2015.

On or about July 13, 2016, independent arbitrator Roger Maher notified MDH that a hearing would be held on August 10, 2016. On August 10, 2016, the arbitration hearing was held. No representative of MDH appeared or otherwise contacted the arbitrator. Because MDH had notice of the hearing, the arbitrator conducted the arbitration as a default hearing. Petitioners entered evidence into the record, including testimony by the auditor employed by the Funds, which established that MDH was delinquent in its payments for the periods July 1, 2013, through December 28, 2014, and December 29, 2014, through December 31, 2015. On August 23, 2016, the arbitrator issued the Award in favor of Petitioners, finding that MDH owes the Funds \$35,953.15, plus interest to accrue at a rate of 5.5% from the date of the Award. The arbitrator based his decision on the testimony of the auditor and the summary report of the audit, among

other evidence.

On January 19, 2017, Petitioners commenced this case to confirm and enforce the Award pursuant to Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(3), and/or Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9. On January 25, 2017, Petitioners served MDH with a Court Order setting an initial conference date, along with the Court’s Individual Rules. On January 30, 2017, Petitioners served MDH with a summons, the petition and a memorandum of law in support of the petition. MDH did not file a response to Petitioners’ petition.

II. DISCUSSION

A. Confirmation of the Award

Section 301 of the LMRA “provides federal courts with jurisdiction over petitions brought to confirm labor arbitration awards.” *Trs. for the Mason Tenders Dist. Council Welfare Fund v. Super, LLC*, No. 16 Civ. 6387, 2017 WL 2703572, at *2 (S.D.N.Y. June 22, 2017) (quoting *Local 802, Assoc. Musicians v. Parker Meridien Hotel*, 145 F.3d 85, 88 (2d Cir. 1998)). “[G]enerally a district court should treat an unanswered . . . petition to confirm . . . as an unopposed motion for summary judgment.” *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006).

Though a summary judgment standard is applied to confirmation proceedings, a “federal court’s review of labor arbitration awards is narrowly circumscribed and highly deferential -- indeed, among the most deferential in the law.” *Nat’l Football League Mgmt. Council v. Nat’l Football League Players Ass’n*, 820 F.3d 527, 532 (2d Cir. 2016). “As long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,

that a court is convinced he committed serious error does not suffice to overturn his decision.” *United Bhd. Carpenters & Joiners of Am. v. Tappan Zee Constructors, LLC*, 804 F.3d 270, 275 (2d Cir. 2015). “It is the arbitrator’s construction of the contract and assessment of the facts that are dispositive, ‘however good, bad, or ugly.’” *Nat’l Football League*, 820 F.3d at 536 (quoting *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064, 2071 (2013)). The Award should be confirmed as long as it “draws its essence from the collective bargaining agreement and is not merely the arbitrator’s own brand of industrial justice.” *Id.* at 537 (citations omitted).

No genuine issues of material fact exist in this case. Petitioners’ petition is uncontested, the evidence before the arbitrator supports the finding that MDH was delinquent on its benefits contributions in the amount that the arbitrator determined, and the Award draws its essence from the collective bargaining agreement, which requires MDH to make benefits contributions, provides for arbitration where contributions are not made and empowers the arbitrator to award monetary damages and interest. *See Nat’l Football League*, 820 F.3d at 537; *see also Trs. for the Mason Tenders Dist. Council Welfare Fund v. DCM Grp., LLC*, No. 13 Civ. 1925, 2017 WL 384690, at *4 (S.D.N.Y. Jan. 25, 2017) (confirming arbitration award brought under LMRA § 301 where defendant did not oppose petition and record supported arbitrator’s findings). Consequently, Petitioners are entitled to confirmation of the Award.

B. Attorneys’ Fees and Costs

Petitioners also request payment of attorneys’ fees and costs in the amount of \$1,957.50. “Section 301 of the [LMRA] does not provide for attorney[s]’ fees in actions to confirm and enforce an arbitrator’s award.” *Int’l Chem. Workers Union (AFL-CIO), Local No. 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985). However, a court may award fees and costs in an LMRA case pursuant to its equitable powers. *See Odeon Capital Grp. LLC v. Ackerman*, --

F.3d --, 2017 WL 3091560, at *5 (2d Cir. July 21, 2017). “As applied to suits for the confirmation and enforcement of arbitration awards, . . . when a challenger refuses to abide by an arbitrator’s decision without justification, attorney’s fees and costs may properly be awarded.” *See Int’l Chem. Workers Union*, 774 F.2d at 47 (citation omitted); *accord N.Y.C. Dist. Council of Carpenters v. New England Constr. Co., Inc.*, No. 16 Civ. 6608, 2017 WL 1967743, at *4 (S.D.N.Y. May 11, 2017).

Here, MDH signed a collective bargaining agreement that provided for arbitration, failed to participate in the arbitration proceeding after notice of both the hearing and its delinquency, failed to satisfy the Award and failed to oppose the instant petition. In so doing, MDH has failed to justify its refusal to abide by the arbitrator’s decision. Petitioners are therefore entitled to reasonable attorneys’ fees and costs. *See, e.g., Trs. of the N.Y.C. Dist. Council of Carpenters Pension Fund v. Coastal Env’tl. Grp., Inc.*, No. 16 Civ. 6004, 2016 WL 7335672, at *3–4 (S.D.N.Y. Dec. 16, 2016) (awarding fees and costs where employer agreed to arbitration, but failed to appear at the arbitration, satisfy the award or oppose a petition to confirm the award).

Petitioners are also entitled to reasonable attorneys’ fees under ERISA, which provides that the “prevailing party in an action to recover unpaid contributions to a benefit fund is entitled to an award of reasonable attorneys’ fees and costs.” *Odeon Capital Grp.*, 2017 WL 3091560, at *6 (implicitly holding that an action to confirm an arbitration award compelling ERISA payments is considered an action to recover unpaid contributions).

In support of their request for fees and costs, Petitioners submit contemporaneous timesheets and background information about the attorneys who worked on the case. Petitioners spent a total of 8.5 hours on the petition, at a rate of \$300 per hour for “Of Counsel” attorneys, \$225 per hour for associate attorneys and law clerks and \$100 per hour for legal assistants.

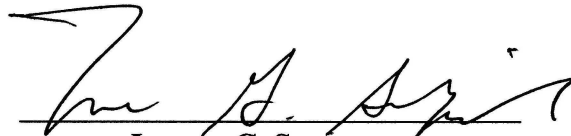
Petitioners also spent \$70 in service fees. On review of the contemporaneous time records and background information, the amounts requested are reasonable. *See, e.g., Trs. of the N.Y.C. Dist. Council of Carpenters Pension Fund*, 2016 WL 7335672, at *3–4. Thus, Petitioners’ request for fees and costs is also granted.

III. CONCLUSION

For the foregoing reasons, Petitioners’ petition for confirmation of the Award is GRANTED. Petitioners are entitled to \$35,953.15, plus prejudgment interest at a rate of 5.5% per annum from August 23, 2016, through the date of judgment in this action. Petitioners are further entitled to \$1,957.50 in attorneys’ fees and costs.

The Clerk of Court is respectfully directed to enter judgment in favor of Petitioners and close this case.

Dated: July 26, 2017
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE