

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE METAL LATHERS LOCAL 46	:	
PENSION FUND, et al.,	:	
	:	19-CV-3148 (JMF)
Petitioners,	:	
	:	<u>MEMORANDUM OPINION</u>
-v-	:	<u>AND ORDER</u>
	:	
REGAL USA CONSTRUCTION, INC.,	:	
	:	
Respondent.	:	
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JESSE M. FURMAN, United States District Judge:

On April 9, 2019, Petitioners filed a petition to confirm an arbitration award. *See* Docket No. 1. On April 12, 2019, the Court set a briefing schedule for Petitioners’ submission of any additional materials in support of the Petition, Respondent’s opposition, and Petitioners’ reply. *See* Docket No. 6; *see also* Docket No. 10 (extending deadlines). Petitioners filed an additional brief in support of their petition, *see* Docket No. 7, and served Respondent with the Petition, supporting materials, and the briefing schedule, *see* Docket No. 8. Pursuant to the briefing schedule, Respondent’s opposition was due no later than May 23, 2019. *See* Docket No. 10. To date, however, Respondent has neither responded to the petition nor otherwise sought relief from the Award.

The Court must treat the Petition, even though unopposed, “as akin to a motion for summary judgment based on the movant’s submissions.” *Trs. for Mason Tenders Dist. Council Welfare Fund, Pension Fund, Annuity Fund & Training Program Fund v. Capstone Constr. Corp.*, 11-CV-1715 (JMF), 2013 WL 1703578, at *2 (S.D.N.Y. Apr. 19, 2013) (discussing in

depth the legal standards for resolving unopposed petitions to confirm arbitration awards). After reviewing the petition and the supporting materials, the Court finds that there is no genuine issue of material fact precluding summary judgment as to all portions of the Award, as the Arbitrator's decision provides more than "a barely colorable justification for the outcome reached." *Id.* at *3 (internal quotation marks omitted); *see, e.g., The Mason Tenders Dist. Council Welfare Fund v. DCM Grp., LLC*, No. 7:13-CV-01925 (NSR), 2017 WL 384690, at *4 (S.D.N.Y. Jan. 25, 2017) (confirming arbitration award where "[a]fter reviewing written evidence and testimony, [the] Arbitrator . . . determined that Defendant was delinquent in its payments"). Nor is there any justification under Section 10(a) of the Federal Arbitration Act for vacating the Award. This conclusion is not undone by the fact that Respondent did not appear in the Arbitration (just as they did not appear here), as the Court can confirm awards issued in arbitrations that Respondent choose, after sufficient notice, not to appear in. *See, e.g., DCM Grp.*, 2017 WL 384690, at *1, 4 (confirming arbitration award in an arbitration in which the respondent did not participate); *Trustees of New York City Dist. Council of Carpenters Pension Fund v. Sherriff Assocs., Inc.*, No. 12-CV-7 (TPG), 2012 WL 763580, at *1 (S.D.N.Y. Mar. 9, 2012) (same).

The Court also awards Petitioners attorneys' fees, but not the \$2,640 requested. *See* Docket No. 7-10; *see also, e.g., Int'l Chem. Workers Union (AFL-CIO), Local No. 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985) ("[W]hen a challenger refuses to abide by an arbitrator's decision without justification, attorney's fees and costs may properly be awarded." (internal quotation marks omitted)). Here, Petitioners have met their burden of proving the reasonableness and necessity of hours spent. *See* Docket No. 7-10 (revealing that counsel spent 4.4 billable hours on this case, detailed by activity). They have not, however, justified an hourly rate of \$600 per hour. *See* Docket No. 7-10. Instead, the Court finds that a reasonable hourly

rate for work of this complexity in this District is \$300 per hour. *See Trustees of the New York City Dist. Council of Carpenters Pension Fund v. Onyx Glass & Metal Corp.*, No. 14-CV-7333 (PAE), 2015 WL 5144120, at *5 (S.D.N.Y. Sept. 1, 2015) (“In the Southern District of New York, fee rates for experienced attorneys in small firms generally range from \$250 to \$450 in civil cases.” (internal quotation marks omitted)); *see, e.g., Trustees of New York City Dist. Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund, & Apprenticeship, Journeyman Retraining, Educ. & Indus. Fund v. Windham Constr. Corp.*, No. 17-CV-4630 (VSB) (SDA), 2017 WL 9472944, at *4 (S.D.N.Y. Dec. 27, 2017) (reducing hourly rate to \$225 for legal work done for unopposed petition to confirm arbitration); *Onyx Glass*, 2015 WL 5144120, at *5 (awarding \$300 per hour for legal work done for unopposed petition to confirm arbitration); *Trustees of New York City Dist. Council of Carpenters Pension Fund v. DeJil Sys., Inc.*, No. 12-CV-5 (JMF), 2012 WL 3744802, at *5 (S.D.N.Y. Aug. 29, 2012) (awarding \$200 per hour for legal work one for unopposed petition to confirm arbitration); *Trustees of New York City Dist. Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund, Apprenticeship, Journeyman, Retraining, Educ. & Indus. Fund v. Mountaintop Cabinet Mfr. Corp.*, No. 11-CV-8075 (JMF), 2012 WL 3756279, at *5 (S.D.N.Y. Aug. 29, 2012) (same); *New York City Dist. Council of Carpenters v. Gen-Cap Indus., Inc.*, No. 11-CV-8425 (JMF), 2012 WL 2958265, at *6 (S.D.N.Y. July 20, 2012) (approving a \$215 hourly rate for senior lawyers on an unopposed motion to confirm). Accordingly, the Court awards \$1,320 in attorney’s fees.¹

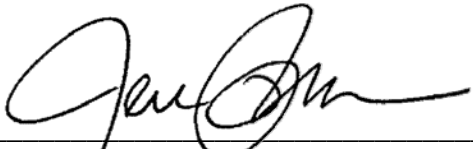
Accordingly, the Court grants Petitioners’ unopposed petition to confirm the entire Award. The Court awards attorneys’ fees in the amount of \$1,320. Petitioners are directed to

¹ The Court notes that while Petitioners have not separately requested prejudgment interest from this Court, the arbitration award includes interest at a rate of 5.25% accruing from the date of the arbitration award. *See* Docket No. 1-1.

file their Proposed Judgment electronically, using the ECF Filing Event “Proposed Judgment,”
by no later than **June 4, 2019**.

SO ORDERED.

Dated: May 28, 2019
New York, New York



JESSE M. FURMAN
United States District Judge