

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE MASON TENDERS DISTRICT	:	
COUNCIL WELFARE FUND, PENSION FUND,	:	
ANNUITY FUND AND TRAINING PROGRAM FUND	:	22-CV-4062 (JMF)
et al.,	:	
	:	<u>MEMORANDUM OPINION</u>
Petitioners,	:	<u>AND ORDER</u>
	:	
-v-	:	
	:	
RC GROUP INC.,	:	
	:	
Respondent.	:	
	:	
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JESSE M. FURMAN, United States District Judge:

On May 18, 2022, Petitioners filed a Petition to Confirm Arbitration. ECF No. 1. On May 19, 2022, the Court set a briefing schedule for Petitioners’ submission of any additional materials in support of the Petition, Respondent’s opposition, and Petitioners’ reply. ECF No. 6. Petitioners served Respondent with the Petition, supporting materials, and the briefing schedule. ECF Nos. 7, 11-12. Pursuant to the briefing schedule, Respondent’s opposition was due no later than June 14, 2022. ECF No. 6. To date, 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). Nor is there any justification under Section 10(a) of the Federal Arbitration Act for vacating the Award.

Finally, the Court grants Petitioners’ request for pre-judgment interest at a rate of nine percent. *See Herrenknecht Corp. v. Best Rd. Boring*, No. 06-CV-5106 (JFK), 2007 WL 1149122, at *3 (S.D.N.Y. Apr. 16, 2007) (“The common practice among courts within the Second Circuit is to grant interest at a rate of nine percent, the rate of pre-judgment interest under New York State law.” (internal quotation marks omitted)); *Waterside Ocean Navigant Co. v. Int’l Navigation Ltd.*, 737 F.2d 150, 154 (2d Cir. 1984) (adopting a “presumption in favor of pre-judgment interest”).

Accordingly, the Court grants Petitioners’ unopposed petition to confirm the entire Award. Petitioners are directed to file their Proposed Judgment electronically, using the ECF Filing Event “Proposed Judgment,” by no later than **June 30, 2022**.

SO ORDERED.

Dated: June 22, 2022
New York, New York



JESSE M. FURMAN
United States District Judge