



Trustees for The Mason Tenders District Council Welfare Fund, Pension Fund, Annuity Fund, and T

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

TRUSTEES FOR THE MASON TENDERS DISTRICT COUNCIL WELFARE FUND, PENSION FUND, ANNUITY FUND, AND TRAINING PROGRAM FUND ; JOHN J. VIRGA in his fiduciary capacity as director ; and ROBERT BONANZA as Business Manager of the Mason Tenders District Council of Greater New York, OPINION AND ORDER

14 Civ. 8535 (ER) Petitioners, – against – HIGH TECH MASONS OF LONG ISLAND, INC.,

Respondent. RAMOS, D.J.: Trustees for the Mason Tenders District Council Welfare Fund, Pension Fund,

Annuity Fund, and Training Program Fund (“the Funds”), along with the associated labor - management organization, the Mason Tenders District Council of Greater New York (“the Union”), petition the Court to confirm an arbitration award against High Tech Masons of Long

Island, Inc., (“High Tech Masons”) invoking the Court’s jurisdiction under 29 U.S.C. § 185. For the reasons stated below, the petitioners’ motion is GRANTED. I. BACKGROUND

e petitioners are all labor -related organizations that function for the benefit of masons in the New York City area. e Funds are employee benefit plans as defined by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(3), based in New York City. Decl. of

Haluk Savci (“Savci Decl.”) ¶¶ 3–4, Doc. 8. e Funds provide benefits to eligible workers whose employers contribute to the Funds on their behalf, pursuant to collective bargaining

2 agreements between these employers and the Union. Savci Decl. ¶ 3. Funds are established and maintained pursuant to the Amended and Restated Agreement and Declaration of Trust (the “Trust Agreements”) and are collectively administered by a Board of Trustees (“the Trustees”).

Savci Decl. ¶ 3. e Trustees are comprised of union and employer representatives pursuant to the Taft-Hartley Act, 29 U.S.C. § 186(c)(5) . Savci Decl. ¶ 3. Union is a labor organization based in New York. Savci Decl. ¶ 5. e respondent, High Tech Masons, i s a masonry contractor that has employed



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workers affiliated with the petitioners. Savci Decl. ¶ 7. Its principal place of business is New York. Savci Decl. ¶ 7. In July 2011, High Tech Masons recognized the Union as the exclusive bargaining agent for employees who perform work covered under the collective bargaining agreement negotiated

with the Union. Savci Decl. ¶ 8. e agreement includes a requirement that High Tech Masons remit contributions to the Funds fo r employees who performed work covered under the agreement. Savci Decl. ¶¶ 9, 11. It also includes requirements concerning the inspection of

High Tech Masons' records, and it prescribes specific procedures for collecting any delinquent fees owed to the Funds. Savci Decl. ¶¶ 11–14. e agreement includes two relevant arbitration provisions. First, Section 1 of Article X allows the Trustees to take legal action to collect delinquent contributions to the Funds and “may

appeal the dispute to arbitration ” if unresolved by the agreement’s grievance procedures. Savci Decl. Ex. 2 art. X § 1(a) –(b). Second, Section 15(i) of Article VI binds the parties to the terms of

the Trust Agreements, including its arbitration provisions . Savci Decl. ¶ 12. Section 8 of Article IX of the Trust Agreements provides that the Board of Trustees “has the right, in its sole and

absolute discretion, to determine whether to initiate arbitration proceedings against a delinquent
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3 Employer.” Savci Decl. Ex. 3. collective bargaining agreement also provides for the following specified damages: (1) the unpaid contributions. (2) interest on unpaid contributions determined by using the rate prescribed

under section 6621 of Title 26 of the United States code. (3) interest on the unpaid contributions as and for liquidat ed damages. (4) reasonable attorneys’ fees and costs of the action . (5) such other legal or equitable relief as the court deems appropriate. Savci Decl. Ex. 2 art. VI § 17(g). After reviewing union shop steward records, the Funds discovered that High Tec h

Masons failed to pay benefit contributions owed on behalf of its employees for the work period November 1, 2012 through December 31, 2012. Savci Decl. ¶ 20. e Funds initiated arbitration proceedings before Joseph Harris, one of the arbitrators identified in Section 1 of Article X of the collective bargaining agreement. Savci Decl. Ex. 2. e Funds served High

Tech Masons with a notice of arbitration on September 4, 2013, which was received on September 9, 2013. Savci Decl. ¶ 19. e arbitrator gave High Tech Masons notice of an arbitration hearing on September 6, 2013 via certified mail . Savci Decl. ¶ 19. e arbitrator convened the hearing on October 9 . High Tech Masons did not appear at the hearing, and the arbitrator found it to be in default. Savci Decl. ¶ 20. At the hearing, the Funds submitted the collective bargaining agreement , copies of union



shop steward reports , and

an accompanying deficiency report, which established that High Tech Masons was delinquent in its payments to the Funds. Savci Decl. ¶ 21. On October 25, 2013, the arbitrator determined High Tech Masons failed to make the requisite payments to the Funds, and awarded the following damages to the petitioners per the collective bargaining agreement: Case 1:14-cv-08535-ER Document 10 Filed 04/16/20 Page 3 of 8

4 Delinquent Contributions for Fringes\$ 4527.00 Delinquent Contributions for Dues & PAC\$ 361.80 Current Interest (as of October 9, 2013)\$ 122.48 ERISA Damages (20% of Outstanding Principal) ...\$ 905.40 Legal Fees\$ 500.00 Pro-Rated Arbitrator Fees\$ 800.00 TOTAL\$ 7216.68 Savci Decl. Ex. 1 at 3. High Tech Masons has not paid any of the award, nor has it moved to vacate or modify

the award. Savci Decl. ¶ 23. Accordingly, the Funds asked this Court in October 2014 to confirm the arbitrator’s award and enter judgment in their favor for the amount awarded, plus interest at the statutory rate . Compl., Doc. 1 at 2. Although High Tech Masons was served in this action, Doc. 3, it has not made an

appearance before this Court. On February 11, 2020, the Funds moved to confirm and enforce the October 25, 2014 arbitrator’s award and enter a judgment against High Tech Masons. Doc. 7

at 2. II. LEGAL STANDARD S

Confirmation of an arbitral award normally takes the form of a summary proceeding that converts a final arbitration award into a judgment of the court. D.H. Blair & Co., Inc. v.

Gottdiener , 462 F.3d 95, 110 (2d Cir. 2006). e court is required to grant the award unless it is vacated, modified, or corrected. Id. (quoting 9 U.S.C. § 9). A n application for a judicial decree confirming an award receives “streamlined treatment as a motion, obviating the separate contract action that would usually be necessary to enforce or tinker wi th an arbitral award in court.” Hall

St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 582 (2008). In order to promote the goals of arbitration, which consist of “settling disputes efficiently

and avoiding long and expensive litigation ,” arbitration awards “are subject to very limited

5 review.” Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp. , 103 F.3d 9, 12 (2d Cir. 1997) (internal punctuation and quotation marks omi tted). It is not necessary that the arbitrator explain the rationale for the award; the award “should be confirmed if a ground for the arbitrator’s

decision can be inferred from the facts of the case.” D.H. Blair & Co., 462 F.3d at 110 (internal citation and quotation marks omitted) . In short, as long as there is “a barely

colorable justification for the outcome reached, ” a court should enforce an arbit ration award -- even if it d isagrees with it on the merits. Landy Michaels Realty Corp. v. Loc al 32B-32J, Serv. Employees Int’l Union, 954 F.2d 794, 797 (2d Cir. 1992) (internal citation and quotation marks omitted). An unanswered petition to confirm an arbitration award is to be treated “as an unopposed

motion for summary judgment.” D.H. Blair & Co., 462 F.3d at 110; see also Trs. for e Mason Tenders Dist. Council We lfare Fund, Pension Fund, Annuity Fund & Training Program Fund v. Earth Constr. Corp., No. 15 Civ. 3967 (RA), 2016 WL 1064625, at *3 (S.D.N.Y. Mar. 15, 2016) (internal quotation and alterations omitted) (“A district court should treat an unanswered petition to confirm or vacate as an unopposed motion for summary judgment and base its judgment on the record.”). Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a). “An issu e of fact is ‘genuine’ if the evidence is such that a reasonable jury could return a verdict for the non -moving party.” Senno v. Elmsford Union Free Sch. Dist. , 812 F. Supp. 2d 454, 467 (S.D.N.Y. 2011) (citing SCR Joint Venture L.P. v. Warshawsky, 559 F.3 d 133, 137 (2d Cir. 2009)). A fact is “material” if it might affect the outcome of the litigation under the governing law. Id. Even if a motion for summary judgment is unopposed, courts are required to “review the motion . . . and determine from what it has before it whether the moving party is entitled to

6 summary judgment as a matter of law.” Vermont Teddy Bear Co. , Inc. v. 1-800 Beargram Co., 373 F.3d 241, 246 (2d Cir. 2004) (internal quotation marks omitted) (quoting Custer v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir. 1993)). “[W]hen a nonmoving party chooses the perilous path of failing to submit a response to a summary judgment motion, the district court may not grant the motion without first examining the moving party’s submission to determ ine if

it has met its burden of demonstrating that no material issue of fact remains for trial.” Amaker v. Foley, 274 F.3d 677, 681 (2d Cir. 2001). If the burden of proof at trial would fall on the movant, that party’s “own submissions in

support of the m otion must entitle it to judgment as a matter of law.” Albee Tomato, Inc. v. A.B. Shalom Produce Corp. , 155 F.3d 612, 618 (2d Cir. 1998). e Court must “construe the facts in the light most favorable to the non -moving party and must resolve all ambiguities and draw all reasonable inferences against the movant.” Brod v. Omya, Inc., 653 F.3d 156, 164 (2d Cir. 2011)

(internal quotation marks omitted) (quoting Williams v. R.H. Donnelley, Corp., 368 F.3d 123, 126 (2d Cir. 2004)). III. THE ARBITRATION AWARD

e Court has conducted a limited review of the arbitration agreement entered into by the parties and the ensuing arbitration award. e agreement between the parties conferred the Funds “the right, in its

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sole and absolute discretion, to determine whether to initiate arbitration

proceedings against a delinquent Employer.” Savci Decl. Ex. 3 art. IX § 8. e collective bargaining agreement specified that any arbitration was to take place before one of two arbitrators, one of whom was the arbitrator assigned her e, Harris. Savci Decl.

Ex. 2 art. X § 1. e agreement further states: e arbitrator shall have the right to conduct an ex -parte hearing in the event of the failure of either party to be present at the time and place designated

7 for the arbitration, and shall have the power to render a decision based on

the testimony before h im at such hearing. e decision of the arbitrator shall be final and binding upon both parties and may be entered as a final decree or judgment in the Supreme Court of the State of New York or in a court of

appropriate jurisdiction in any state where such decision shall be rendered. Id.

After providing notice via certified mail to High Tech Masons , the arbitrator found that High Tech Masons was in default. Savci Decl. ¶ 20. Despite the default, the arbitrator heard

evidence from the petitioners detailing the collective bargaining agreement, copies of union shop steward reports, and an accompanying deficiency report, which established that High Tech Masons was delinquent in its payments to the Funds . Id. ¶ 21. ere is no indication that this decision was made arbitrarily, that it exceeded the arbitrator’s jurisdiction under the agreement,

or that it was contrary to law. See Trs. of New York City Dist. Council of Carpenters Pension Fund v. Dejl Sys., Inc. , No. 12 Civ . 005 (JMF), 2012 WL 3744802, at *3 (S.D.N.Y. Aug. 29, 2012) (“Where, as here, there is no indication that the arbitration decision was made arbit rarily, exceeded the arbitrator’ s jurisdiction, or otherwise was contrary to law, a court must confirm the award upon the time ly application of any party.”). Accordingly, the Court finds that based on the record provided, together with the appropriate narrow level of review, there is no disputed material issue of fact and the arbitration

award should be CONFIRMED. See Landy , 954 F.2d at 797 (“[A]n arbitration award should be enforced . . . if there is ‘a barely colorable justification for the outcome reached.’” (quoting

Andros Compania Maritima, S.A. v. Marc Rich & Co. , 579 F.2d 691, 704 (2d Cir. 1978))). IV. POST-JUDGMENT INTEREST

e petitioners also seek to recover post-judgment interest, which the Court grants on the full judgment amount pursuant to 28 U.S.C. § 1961(a). See Lewis v. Whelan, 99 F.3d 542, 545



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8 (2d Cir. 1996) (“e award of post -judgment interest is mandatory on awards in civil cases as of the date judgment is entered.”). V. CONCLUSION

For the reasons stated above, the petitioners’ motion is GRANTED. e arbitration award is confirm ed, and the Clerk of the Court is directed to enter judgment in favor of the petitioners in the amoun t of \$ 7,216.68 against High Tech Masons of Long Island . is judgment shall accrue post -judgment interest as mandated in 28 U.S.C. § 1961. e Clerk of the Court is respectfully directed to terminate the motion, Doc. 7, and close the case. It is SO ORDERED. Dated: April 16, 2020 New York, New York EDGARDO RAMOS, U.S.D.J. Case 1:14-cv-08535-ER Document 10 Filed 04/16/20 Page 8 of 8

