IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mission Wellness Pharmacy, LLC, Petitioner, v. Caremark, LLC, et al., Respondents.	No. CV-22-00967-PHX-GMS **ORDER**

Pending before the Court is Petitioner Mission Wellness Pharmacy, LLC's Motion for Award of Attorneys' Fees, Pre-Judgment Interest, and Non-Taxable Expenses (Doc. 58). For the reasons stated below, the motion is granted. Mission Wellness is awarded $193,400.71 in attorney's fees, and $372,152.06 in pre-judgment interest.

1. Attorney's Fees

Mission Wellness's arbitration agreement with Caremark entitles it to an award of attorneys' fees incurred in securing a confirmation to its arbitration award.

The arbitration agreement between the parties specified that "the expenses of arbitration, including reasonable attorneys' fees, will be paid for by the party against whom the final award of the arbitrator(s) is rendered, except as otherwise required by Law." Doc. 58-1 at 8. Arbitration proceedings, as defined by the agreement "must follow the rule of Law, and the award of the arbitrator(s) will be final and binding on the parties, and judgment upon such award may be entered in any court having jurisdiction thereof." *Id.*

Thus, the agreement recognizes the necessity in at least some arbitration proceedings of obtaining "judgment upon such award may be entered in any court having jurisdiction thereof." Further, in this case, Caremark refused to honor the arbitration award, thus failing to comply with the agreement's specification that "the award of the arbitrator(s) will be final." It did so by challenging whether the arbitrator followed the law – something also required by the agreement. The parties' agreement does not limit the "expenses of arbitration" to those alone arising from the arbitration proceeding itself. In cases in which the loser at arbitration does not comply with the arbitration award, but obliges the prevailing party to seek confirmation of the award, or challenges the award as being out of compliance with the law, "the expenses of arbitration" include the cost of verifying the arbitration's validity and confirming the award.[1]

Caremark nevertheless identifies time entries of Petitioner's counsel in several different categories that it claims should not be paid. Although all of the different categories identified by Caremark make deductions for block billing, (categories A, C and D) some make claims for excessive intra-office conferences, and others amounts that assertedly do not relate to this arbitration and/or other unreasonable expenses.

Mission Wellness's counsel did block-bill. Thus, it is impossible to evaluate the reasonableness of times spent on all of the individual activities of Petitioner's counsel. Caremark identifies $42,706 of what it asserts to be block billing by Frier Levitt in Exhibit A. Yet, not all of the time designated by Caremark is block-billed, (See, as an example a few of the entries from Exhibit A which the Court does not consider to be block billing for purposes of evaluation: 8/18/22, 8/19/22 9/6/22, 9/14/22, 9/19/22). Further to

[1] The Court is aware that in so holding that there is a split in this district concerning whether an arbitration agreement with terms virtually identical to this one provide for the award of attorney's fees incurred in confirming an arbitration award. *Compare Senderra Rx Partners LLC v. CVS Health Corporation, 2:19-cv-05816 SPL (Doc. 51) at 4-5* (D. Ariz. Aug. 18, 2020) with *Caremark LLC v. AIDS Health Foundation,* 2022 WL 4267791 at *10 (D. Ariz. September 15, 2022). Nevertheless, the Court in *Caremark* also arrived, on other grounds, at the conclusion that the prevailing party at arbitration under that agreement was also due their attorney's fees incurred in confirming their award against Caremark. In arriving at the same result, albeit on different grounds, this Court applied its analysis in best of faith to the question, as it is sure the *Caremark* Court did.

the extent that some of these entries might technically be considered block billing it is possible to evaluate the reasonableness of the time billed for the cumulative activities identified in at least some of the blocks. Much of that time does not appear to be unreasonable. (See, again as examples from Exhibit A the two entries for 6/9/23, the two entries for 6/26/23 and the entry from 6/23/23). So, in short, while Mission Wellness's counsel did engage in block-billing, it did not do so to the full extent urged by Caremark; yet Caremark's block billing does prevent the Court and Caremark from confirming that all of the time spent in the block-billing is reasonable. The Ninth Circuit authorizes a reduction for block billing between "ten to thirty percent based upon a report that block billing inflated billed hours by that percentage range." *Moon v. Am. Fam. Mut. Ins. Co. SI.* 2018 WL 3729762 at *3 (D. Ariz. Aug 6, 2018) (citing to *Welch v. Metro Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007). Because the block-billed amounts cumulatively do not strike the Court as clearly unreasonable, it will deduct 10% from those amounts due to the block-billing.

In Exhibit B, Caremark takes the position that $18,531.50 for intraoffice conferences are unreasonable. Caremark apparently takes the position that all intraoffice conferences are unreasonable since it challenges such conferences even when they are charged in the lowest possible billing increments of one tenth of an hour. (*See, e.g.,* time entry for 5/16/23, 6/5/22,6/23/22, 6/29/22 etc.) Respondent makes no attempt to justify the exclusion of such conferences be they short or long, based on their content. The Court rejects the assertion that all internal conferences are unreasonable, and absent a further explanation why such entries are inappropriate rejects the assertion that they are, and thus finds the amounts in Exhibit B to be reimbursable.

Caremark further asserts that in Exhibit C it has tabulated $84,117.50 in entries by Frier Levitt that are both block billed and reflect unreasonable intraoffice conferences (which are not duplicative of Exhibit A). Caremark further asserts that in Exhibit D it has tabulated $3,994.50 in entries by Iannitelli Marcolini that are both block billed and reflect unreasonable intraoffice conferences. Considered as a whole, the block billing often seems

reasonable for the activities that are grouped in a block, but the block billing does prevent Caremark from showing that any particular intra or interoffice conference is unreasonable. Thus, the Court will treat the amounts similarly to how it treated the asserted block-billed amounts in Exhibit A, and reduce these amounts by ten percent.

Exhibit E also challenges as unreimbursable amounts billed between February 21, 2022, and April 13, 2022 by the Marcolini law firm. The Respondent challenges these as being "cases initiated to enforce third-party subpoenas issued in the underlying arbitration," and thus not related to the confirmation proceeding. Nevertheless, to the extent the Respondent challenges amounts spent in obtaining compliance with third party subpoenas in the underlying action, this is properly reimbursable under the parties' agreement as being "the expenses of arbitration," and is therefore reimbursable.

To the extent to which, in Exhibit F, Plaintiff challenges $10,548.00 for work performed by Frier Levitt that is unrelated to this case, the consultation with its economic expert when Respondent was challenging the reasonableness of the award in the confirmation proceeding and further examining the discovery that came from arbitration is awardable. On the other hand, Respondents challenge without effective response the entries of June 22, 2022, ($783.00) June 24, 2022, ($177.50 and $135.00) June 27, 2022, ($177.50) as they relate to the FTC, The Center for Medicare and Medicaid Services, and the New York State Better Business Bureau as not being reimbursable. Those amounts shall not be reimbursed.

They also challenge without effective response the July 29, 2022, ($532.50) and August 1-3, 2022, ($3,124.00) time entries as relating to topics other than the confirmation. Again, however, because Petitioner's counsel engaged in block billings it is impossible to determine what exact time was spent on reimbursable entries represented in the time entry from unreimbursable entries. In light of the failure of Mission Wellness to make any response to Caremark's identification of these amounts, they will be deducted in whole. The June 29, 2023 entry ($679.50) is challenged without effective response, and appears unreimbursable, while the June 12, 2023 response is appropriately reimbursed as being

"arbitration expenses" integral to the confirmation proceeding.

As to the $4,306.55 in costs challenged in Ex. G, Petitioner has provided no explanation as to why an expense was paid on 3/31/22 for such services, nor has it provided an explanation sufficient to identify the legal research billed as belonging to this action. Therefore, the costs identified in Exhibit G in the amount of $4,306.55 will not be allowed.

The Court declines to award any supplemental amounts raised for the first time in reply.

The following amounts will be deducted from $216,393.06—the amount sought by Mission Wellness.

Exhibit A.	$ 4,270.60
Exhibit B	$0
Exhibit C	$ 8,411.75
Exhibit D	$ 394.45
Exhibit E	$0
Exhibit F	$ 5,609.00
Exhibit G	$ 4,306.55
Total	$22,992.35

Mission Wellness seeks $216,393.06 in fees and costs. That amount minus $22,992.35 equals $193,400.71. That amount is awarded to Mission Wellness as its attorneys' fees.

2. Pre-judgment Interest

The amount of the arbitration award, once issued, is a sum certain. "Interest that accumulates from the time an arbitration award is issued until the time a judgment from the district court affirming the arbitration award is entered is considered pre-judgment interest." *Caremark*, 2022 WL 4267791 at * 11 quoting *TSYS Acquiring Sols. LLC v. Elec. Payment Sys., LLC*, 2010 WL 1781015 at *4 (D. Ariz. May 4, 2010) (citing *Northrop Corp. v. Triad Int'l Mktg., S.A.*, 842 F.2d 1154, 1155 ((9th Cir. 1988). State law determines the rate of pre-judgment interest. *Northrup*, 842 F.2d at 1155. Pursuant to that law "[i]nterest

on any judgment . . . shall be at the lesser of ten per cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15" A.R.S. §44-1201(B). The applicable interest rate, as unchallenged by Caremark is 9.25%. Application of this rate results in prejudgment interest of $372,152.06 on the arbitrator's judgment of $3,662,099.47.

IT IS THEREFORE ORDERED granting in part and denying in part Mission Wellness's Motion for Attorney Fees (Doc. 58). As explained in detail above, Mission Wellness is awarded attorneys' fees in the amount of $193,400.71.

IT IS FURTHER ORDERED awarding Mission Wellness prejudgment interest in the amount of $372,152.06. Thus, the arbitrator's award together with pre-judgment interest totals $4,034,251.53. Post-Judgment interest runs on that amount at the rate of 4.72% as of the date that the judgment was confirmed – June, 22, 2023.

Dated this 31st day of January, 2024.

G. Murray Snow
Chief United States District Judge