

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-02438-PAB-BNB

ALVIN MOSCH,
PATRICIA C. MOSCH, and
DAVID K. MOSCH, each individually and d/b/a Mosch Mining Company,

Plaintiffs,

v.

JOHN HENRY, a/k/a John T. Henry a/k/a John L. Henry,
UNITED STATES REAL ESTATE CORPORATION, and any one claiming by
of through any of the named persons,

Defendants.

ORDER REGARDING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Boyd N. Boland filed on March 7, 2013 [Docket No. 162]. The Recommendation states that objections to the Recommendation must be filed within fourteen days after its service on the parties. See 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on March 7, 2013. No party has objected to the Recommendation.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. See *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when

neither party objects to those findings”). In this matter, the Court has reviewed the Recommendation to satisfy itself that there is “no clear error on the face of the record.”¹ Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, the Court concludes that the Recommendation does contain a clear error. The affidavit [Docket No. 155-1] in support of the motion for attorneys’ fees [Docket No. 155] seeks attorneys’ fees at a rate of \$250.00 per hour before January 1, 2013 and \$300.00 per hour after that date. However, in multiplying the number of hours reasonably incurred by the reasonable hourly rate, which the Recommendation found to be between \$250.00 and \$300.00, the Recommendation used a rate of \$350.00 per hour, instead of \$300.00 per hour, after January 1, 2013. This clerical error resulted in the award being overstated by \$350.00. The Court finds no clear error in the Recommendation’s calculation of the number of hours and no clear error in its approval of a rate ranging from \$250.00 to \$300.00 per hour. Accordingly, it is

ORDERED as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 162] is ACCEPTED in part and REJECTED in part.

2. Plaintiff’s Motion to Enter Judgment for Attorneys’ Fees and Expenses Incurred [Docket No. 155] is granted in part. Plaintiffs are awarded attorney fees in the amount of \$49,200.00.

¹This standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review. Fed. R. Civ. P. 72(b).

DATED April 10, 2013.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge