

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ASTA FUNDING, INC,

Petitioner,

v.

DAVID SHAUN NEAL, et al.,

Defendants.

Civ. No. 2:14-2495

(KM) (MAH)

MEMORANDUM and ORDER

KEVIN MCNULTY, U.S.D.J.:

On June 30, 2016, I entered judgment in favor of the plaintiff, Asta Funding, Inc. ("Asta"). (DE 24, 25, 26) I denied a motion for reconsideration. (DE 46, 48) I also denied a Rule 60(b) motion to reopen the judgment. (DE 72) Plaintiffs filed notices of appeal (DE 51, 52) from my judgment and the denial of the post-judgment motions. Recently, on November 8, 2018, the U.S. Court of Appeals affirmed my judgment on the merits. (DE 95) In the ordinary course, the mandate will issue in approximately 21 days. Fed. R. App. P. 41(b).

Meanwhile, Asta filed a motion, superseded by a renewed motion, for attorney's fees and costs. (DE 57) This was followed by motions to strike Asta's motion, contest service, and so on. The Magistrate Judge entered a report and recommendation awarding fees and costs, with accompanying order. (DE 83, 84) The plaintiffs did not then file any objection pursuant to Fed. R. Civ. P. 72; *see also* D.N.J. Local Civ. R. 72.1c.

Instead, the plaintiffs filed notices of appeal to the U.S. Court of Appeals for the Third Circuit. (DE 85, 86) By amended orders dated November 28, 2017, the Third Circuit dismissed those appeals for lack of jurisdiction, because there was no final order as to attorney's fees. The Court noted that there is no direct appeal to the Court of Appeals from a Magistrate Judge's report and recommendation on a dispositive matter. Such a report and

recommendation, the Court wrote, “must be accepted, rejected or modified by the District Court.” (DE 89, 90). The Court of Appeals’ decision issued in the form of a certified order in lieu of formal mandate, terminating the appeal. (*Id.*).

A few days later, concerned that the plaintiffs not forfeit procedural rights as a result of a procedural misstep, I entered the following text order:

12/01/2017 TEXT ORDER: I am in receipt of an order from the U.S. Court of Appeals essentially stating that plaintiffs' notice of appeal was premature because the Magistrate Judge's award of attorney's fees must first be accepted, rejected, or modified by the district court. Plaintiff Asta has filed a letter requesting that the Magistrate Judge's award be affirmed. Because of the evidence procedural confusion, I will accept filing of objections in response to plaintiff's letter within 14 days.

(DE 92)

I did not receive objections to the Magistrate Judge’s report & recommendation, within 14 days or at any time thereafter.¹ Asta sent a letter requesting that I adopt the report and recommendation. (DE 93)² Recently,

¹ The Third Circuit has summarized the standards for review of a Magistrate Judge’s report and recommendation on a dispositive issue as follows:

The product of a magistrate judge, following a referral of a dispositive matter, is often called a “report and recommendation.” Parties “may serve and file specific written objections to the proposed findings and recommendations” within 14 days of being served with a copy of the magistrate judge’s report and recommendation. Fed. R. Civ. P. 72(b)(2). If a party objects timely to a magistrate judge’s report and recommendation, the district court must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b)(3).

Equal Employment Opportunity Comm’n v. City of Long Branch, 866 F.3d 93, 99–100 (3d Cir. 2017).

² Meanwhile, still pending were two notices of appeal filed by Neal (DE 75, 76) with respect to various ancillary rulings in connection with attorney’s fees. Once again, the Court of Appeals dismissed the appeal for lack of jurisdiction, because the orders being appealed (DE 71, 72) were not final. That decision, dated November 7, 2017, again took the form of a certified order in lieu of formal mandate, terminating the appeal. (DE 94).

following the affirmance of my judgment on the merits, Asta renewed its letter request that I adopt the Magistrate Judge's report and recommendation regarding attorney's fees. (DE 96)

ORDER

IT APPEARING that the Magistrate Judge has entered a report and recommendation and order (DE 83, 84) awarding attorney's fees in the amount of \$694,174.07 and costs in the amount of \$63,183.14; and

IT FURTHER APPEARING that plaintiffs filed no objection pursuant to Fed. R. Civ. P. 72; and

IT FURTHER APPEARING that plaintiffs instead filed notices of appeal to the U.S. Court of Appeals for the Third Circuit, which thereafter dismissed the appeals for lack of jurisdiction (DE 89, 90); and


IT FURTHER APPEARING that this Court then afforded the plaintiffs a second opportunity to file objections to the Magistrate Judge's report and recommendation within 14 days (DE 92); and

IT FURTHER APPEARING that the plaintiffs again failed to file any objection pursuant to Fed. R. Civ. P. 72, then or at any time; and

THE COURT having reviewed the report and recommendation, and found no error therein;

IT IS this 9th day of November, 2018,

ORDERED that the Magistrate Judge's report and recommendation and order (DE 83, 84) are **AFFIRMED** for the reasons expressed therein, and adopted by the Court. Defendant may submit a form of judgment within 7 days.


KEVIN MCNULTY
United States District Judge