

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

**TRUSTEES OF THE IBEW LOCAL 351
PENSION FUND, ET AL.,**

Plaintiffs,

v.

**MERCHANT ELECTRIC, INC., doing
business as MERCHANT ELECTRIC
AND LIGHTING SERVICES, INC.,**

Defendant.

Civ. No. 19-12451 (KM)

ORDER & JUDGMENT

IT APPEARING that the court, by Steven C. Mannion, U.S. Magistrate Judge, granted the motion of Ronald L. Tobia, Esq., to withdraw as counsel for the defendant (DE 31); and

IT FURTHER APPEARING that defendant, a corporate party which cannot appear *pro se*, thereafter failed to obtain substitute counsel, failed to produce required discovery, including payroll audit records, and in general has not substantively appeared or participated in the litigation any further; and

IT FURTHER APPEARING that the clerk entered default on August 4, 2020; and

IT FURTHER APPEARING that on December 16, 2020, the plaintiffs moved for entry of a default judgment (DE 37); and

THE COURT HAVING CONSIDERED the usual factors for a default judgment, and found that defendants were properly served; that plaintiffs have established their entitlement to delinquent contributions, to which no meritorious defense appears; that plaintiffs are prejudiced in that they have been stymied from making their case; and that defendants are culpable for the default; and

THE COURT HAVING FURTHER CONSIDERED, in the alternative, the *Poullis* factors¹ for dismissal of an action for failure to prosecute, and found that (1) defendant is responsible for its own default; (2) defendant has obstructed the progress of the litigation, particularly by its failure to make discovery; (3) that delay has resulted; (4) that no excuse, other than financial inability, is made for the defendant's purposeful failure to make discovery or procure new counsel; (5) that no lesser sanction will suffice; and (6) that no defense to plaintiffs' demand for delinquent contributions appears;

AND THE COURT having reviewed the application for attorney's fees, pursuant to 29 U.S.C. § 1132(g), and found it reasonable;

IT IS, this 1st day of June, 2021,

ORDERED that the motion (DE 37) is **GRANTED**; and it is further **ORDERED and ADJUDGED** that the Plaintiffs recover of Defendant Merchant Electric, Inc. the sum of \$158,646.35, which is inclusive of interest, liquidated damages, and attorneys' fees, as provided by law, and to include additional interest thereon; and

IT IS FURTHER ORDERED Defendant Merchant is to produce the following documents to the Plaintiffs within fourteen (14) days of the date of this Order: Time Cards/Time Sheets for all employees for the period of January 1, 2011 through December 31, 2016; all Cash Disbursement Journals for the period of January t 2011 through December 31, 2016; IRS Form 1099's for years 2011, 2012 and 2013; a Complete Job Listing for the period of January 1, 2011 through December 31, 2016; the 2011 General Ledger; invoices for Integrity Electrical Staffing, Integrity Electrical Consulting, Genmar Consulting; payments to Joseph Scaglione; and cash disbursements adjustments listed under materials for the period of January 1, 2011 through December 31, 2016; and

¹ *Poullis v. State Farm Fire & Cas. Corp.*, 747 F.2d 863, 868 (3d Cir. 1984).

IT IS FURTHER ORDERED that this Court will retain active jurisdiction over the enforcement and continued litigation of this matter, if and as it may become necessary.

/s/ Kevin McNulty

KEVIN MCNULTY
United States District Judge