

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI AND FRANK FINKEL,  
Trustees of Local 282 International  
Brotherhood of Teamsters Welfare,  
Pension, Annuity, Job Training and  
Vacation Sick Leave Trust Funds,

Plaintiffs,

-against-

PHYLLIS CIRILLO d/b/a ALL AROUND  
TRUCKING INC. and ALL AROUND TRUCKING  
INC.,

Defendants.

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**ORDER ADOPTING REPORT  
AND RECOMMENDATIONS**

09-CV-4570 (KAM)(JMA)

**MATSUMOTO, United States District Judge:**

Plaintiffs Thomas Gesualdi and Frank Finkel ("plaintiffs"), as Trustees of the Local 282 Welfare, Pension, Annuity, Job Training, and Vacation/Sick Leave Funds ("the Funds"), brought this action against Phyllis Cirillo, doing business as All Around Trucking Inc., and All Around Trucking Inc. (collectively, "defendants"), pursuant to 29 U.S.C. §§ 1132 and 1145 of the Employee Retirement Income Security Act of 1974 ("ERISA") seeking to recover delinquent contributions and associated payments alleged owed to the Funds, as well as injunctive relief. (See generally ECF No. 1, Complaint ("Compl.")) Presently before the court is a Report and Recommendation ("R&R") issued by Magistrate Judge Azrack on January 3, 2011, recommending that this court enter a default judgment against defendants in the amount of \$109,929.39. (ECF

No. 7, R&R, at 2.)

Notice of the Report and Recommendation was sent electronically to the parties appearing in the docket via the court's electronic filing system on January 3, 2011. The Report and Recommendation directed counsel for the plaintiffs to serve a copy of the Report and Recommendation by certified mail on defendants and to promptly file a declaration of service with the court. (ECF No. 7, R&R, at 12.) On January 3, 2011, plaintiffs' counsel filed a declaration indicating service of the Report and Recommendation upon defendants by first class mail on January 3, 2011. (ECF No. 8, Decl. of Service, dated Jan. 3, 2011.)

As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within fourteen days of receipt of the report. (ECF No. 7, R&R, at 12.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Azrack's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. State of New York*, 160 F. Supp. 2d 606,

609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a review of the Report and Recommendation, and considering that the parties have failed to object to any of Magistrate Judge Azrack's thorough and well-reasoned recommendations, the court finds no clear error in Magistrate Judge Azrack's Report and Recommendation and hereby affirms and adopts the Report and Recommendation as the opinion of the court.

Counsel for plaintiffs shall serve a copy of this Memorandum and Order upon defendants and file a declaration of service by February 15, 2011. The Clerk of the Court is respectfully directed to enter a default judgment against defendants in the amount of \$109,929.39 and to close the case.

**SO ORDERED.**

Dated: February 14, 2011  
Brooklyn, New York

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Kiyoo A. Matsumoto  
United States District Judge