

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DR. GERALD FINKEL,

Plaintiff,

-against-

METRO ELECTRICAL CONTROL
SYSTEMS LTD., et al.,

Defendants.

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AMON, Chief United States District Judge.

NOT FOR PUBLICATION
MEMORANDUM & ORDER
10-CV-2012 (CBA) (JO)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
★ SEP 13 2012 ★

BROOKLYN OFFICE

Plaintiff Dr. Gerald Finkel, Chairman of the Joint Industry Board of the Electrical Industry, brings this action in his capacity as administrator and fiduciary of various employee benefit plans for electrical industry workers pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and Sections 404, 409, 502, and 515 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1104, 1109, 1132, and 1145 against defendants Metro Electrical Control Systems Ltd. ("Metro"), College Electric Corp. ("College"), and Christopher Romano ("Romano"). Finkel alleges that defendants failed to make timely contributions to the plans as required under collective bargaining agreements between Local Union No. 3 of the International Brotherhood of Electrical Workers, AFL-CIO (the "Union") and various employers. The defendants failed to appear or otherwise defend this action, and upon Finkel's application, the Clerk of the Court entered default against defendants Metro and College on December 23, 2010, D.E. #14, and against Romano on October 4, 2011, D.E. #25. Finkel filed the instant amended motion for default judgment as to all defendants on January 5, 2012, D.E. # 26, which this Court referred to Magistrate Judge James

Orenstein for report and recommendation. Pending before the Court is Magistrate Judge Orenstein's Amended Report and Recommendation (the "R&R"). D.E. # 36.¹

Neither party has objected to the R&R. "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Wilds v. United Parcel Service, Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (internal citations and quotation marks omitted). The Court has reviewed the record and, finding no clear error, hereby adopts Magistrate Judge Orenstein's R&R in its entirety.

The plaintiffs' motion for default judgment is granted. Pursuant to 29 U.S.C. § 1132(g)(2)(D), the Clerk of Court is directed to enter judgment against the defendant in the amount of \$381,547.04, consisting of \$74,006.14 owed pursuant to the Stipulation entered on February 8, 2010, \$203,021.81 in unpaid contributions, \$29,514.02 in interest,² \$70,781.57 in liquidated damages, and \$4,223.50 in attorneys' fees and costs. For the reasons stated in the R&R, all three defendants are jointly and severally liable for \$94,410.10 of the \$381,547.04. Defendants Metro and Romano, but not College, are jointly and severally liable for the remaining \$287,136.94 of the award. The Clerk of Court is then directed to close the case.

SO ORDERED.

Dated: Brooklyn, N.Y.

September 12, 2012


Carol Bagley Amdur
Chief United States District Judge

¹ Magistrate Judge Orenstein filed his initial R&R on July 31, 2012. Upon objection by plaintiff, Judge Orenstein issued an Amended R&R on August 17, 2012. The Amended R&R supersedes the July 31 R&R in its entirety.

² The Court notes that there appears to be a typographical error on page 14 of the R&R. The R&R first lists the total amount of interest on unpaid contributions from College as \$6,489.70 and then recommends an award of \$6,595.64. Table 4 of the revised Appendix indicates that \$6,595.64 is the correct amount.