

d/f

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VINCENT MASINO, KEITH LOSCALZO,
FRANCISCO FERNANDEZ, PHILIP A. FAICCO,
JAMES KILKENNY and ANTHONY ROBIBERO, as
Trustees and Fiduciaries of the PAVERS AND ROAD
BUILDERS DISTRICT COUNCIL WELFARE,
PENSION, ANNUITY AND APPRENTICESHIP,
SKILL IMPROVEMENT AND TRAINING FUNDS,

Plaintiffs,

-against-

EAST PORT EXCAVATION & UTILITIES
CONTRACTORS, INC.,

Defendant.
-----X

ORDER

11-CV-0450 (NGG) (VVP)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 28 2013 ★

BROOKLYN OFFICE

NICHOLAS G. GARAUFGIS, United States District Judge.

Plaintiffs Vincent Masino, Keith Loscalzo, Francisco Fernandez, Philip A. Faicco, James Kilkenny, and Anthony Robibero are the employer and employee representatives and the trustees (“Trustee Plaintiffs”) of the Pavers and Road Builders District Council Welfare, Pension, Annuity and Apprenticeship, Skill Improvement and Training Funds (the “Funds Plaintiff”) and collectively bring this action against Defendant East Port Excavation & Utilities Contractors, Inc. under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (“ERISA”). (See Compl. (Dkt. 1); Am. Compl. (Dkt. 10).) On February 5, 2013, the court granted summary judgment to Plaintiffs. (See Order (Dkt. 35).) On April 18, 2013, Plaintiffs moved for attorneys’ fees (Mot. for Fees (Dkt. 45)), and the court referred the motion to Magistrate Judge Viktor V. Pohorelsky for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b) (see May 9, 2013, Order).

On July 23, 2013, Judge Pohorelsky issued an R&R recommending that Plaintiffs be awarded \$31,052.00 in attorneys' fees and \$1,359.94 in costs. (See R&R (Dkt. 48).) Judge Pohorelsky ordered that any objections to his R&R were to be filed by August 9, 2013. (Id. at 5.) No objections to Judge Pohorelsky's R&R were filed and the time to do so has passed.

In reviewing a magistrate judge's R&R, the district court "may adopt those portions of the Report to which no objections have been made and which are not facially erroneous." La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); see also Porter v. Potter, 219 F. App'x 112, 113 (2d Cir. 2007) (failure to object waives further judicial review). The court reviews de novo "those portions of the report . . . to which objection is made." 28 U.S.C. § 636(b)(1).

Because no objections have been filed, the court concludes that the R&R is not facially erroneous and thus the R&R is ADOPTED in its entirety. Plaintiffs is entitled to \$31,052.00 in attorneys' fees and \$1,359.94 in costs in addition to the relief previously awarded by the court. The Clerk of the Court is directed to enter judgment and close the case.

SO ORDERED.

s/NGG

Dated: Brooklyn, New York
August 27, 2013

NICHOLAS G. GARAUFI
United States District Judge