

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARCH INSURANCE COMPANY,

Plaintiff,

- against -

ORDER
11-CV-0930(RRM) (JO)

DCM GROUP LLC,

Defendant.

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MAUSKOPF, United States District Judge.

By Motion filed February 23, 2012 (Doc. No. 26), substitute plaintiff Arch Insurance Company (“Arch”) moved for default judgment against defendant DCM Group LLC. By Order entered February 28, 2012, this Court referred that motion to the assigned Magistrate Judge, the Honorable James Orenstein, for a Report and Recommendation. On August 2, 2012, Judge Orenstein issued a Report and Recommendation (the “R&R”) (Doc. No. 45) recommending that Plaintiff’s motion be granted. The Magistrate Judge also permitted Arch to seek reimbursement of fees and costs of no more than \$5,214.46 by supplementing its request for such reimbursement in lodging its objections to the R&R. (*Id.* at 3, n.1.)

Judge Orenstein reminded the parties that, pursuant to Rule 72(b), any objection to the R&R was due by August 20, 2012. To date, the only objections lodged were those filed by Arch, which objections are limited solely to providing this Court with additional materials to support its request for fees and costs not to exceed \$5,214.46. (Doc. No. 47.) No party has lodged objections to the Magistrate Judge’s recommendation that default judgment enter against DCM in favor of Arch.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed for clear error that portion of the R&R recommending the entry of default judgment and, finding none, concurs with the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007).

The Court has reviewed *de novo* Arch's supplemental request for fees and costs and grants the request. *See Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). Under Section 502 of ERISA, an award of reasonable attorney's fees and costs is mandatory in an action where the plaintiff recovers delinquent contributions. 29 U.S.C. § 1132(g)(2)(D); *see also Labarbera v. Clestra Hauserman, Inc.*, 369 F.3d 224, 226 (2d Cir. 2004) (quoting 29 U.S.C. § 1132(g)(2)(D)); *Chambless v. Masters, Mates & Pilots Pension Plan*, 815 F.2d 869, 871 (2d Cir. 1987). The Second Circuit uses the "presumptively reasonable fee" approach to determine whether attorney's fees are reasonable, which is equal to a reasonable hourly rate multiplied by a reasonable number of hours expended. *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany & Albany Cnty. Bd. of Elections*, 522 F.3d 182, 190 (2d Cir. 2008); *see Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983). Upon review of the supplemental materials filed by plaintiff, both the amount of hours expended and the hourly rate charged are well within the heartland of fee awards for suits seeking unpaid contributions under ERISA.¹ *See, e.g., LaBarbera v. Ovan Const., Inc.*, No. 06-CV-2867 (SLT)(VVP), 2011 U.S. Dist. LEXIS 133730 at *14-16 (E.D.N.Y. Sept. 20, 2012) (collecting cases).

¹ This is particularly so here where the Magistrate Judge has recommended a reasonable cap on recovery given Arch's position as substitute plaintiff and the previous settlement amount. (*See* R&R at 3, n.1.)

CONCLUSION

For the reasons stated herein, the Court hereby ORDERS that default judgment enter in favor of plaintiff Arch Insurance Company as against defendant DCM Group LLC in the total amount of \$82,213.71, consisting of \$58,179.59 in unpaid total contributions; \$8,322.24 in interest on unpaid Fringe Benefit Fund contributions; \$11,549.88 in liquidated damages; and \$4,162 in unremitted dues. The Court further ORDERS the award to plaintiff of \$5,214.46 in fees and costs.

The Clerk of Court shall enter judgment accordingly, mail a copy of this Order and the judgment to defendant DCM Group, and close the file.

SO ORDERED.

Dated: Brooklyn, New York
September 7, 2012

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge