



("R&R") recommending that plaintiff's motion for a default judgment be granted. The R&R recommended that plaintiffs be awarded the following damages from defendant Interstate: (1) \$49,006.78 in delinquent contributions; (2) \$6,473.60 in interest on the untimely paid contributions; (3) \$375.00 in administrative fees; (4) \$11,319.54 in liquidated damages; and (5) \$6,580.10 in attorney's fees and costs. It further recommended that defendant Frantellizzi be jointly and severally liable for \$3,592.24 of the damages assessed in delinquent contributions.

No objections to the R&R have been filed. Accordingly, the Court has reviewed the R&R for clear error on the face of the record. See Advisory Comm. Notes to Fed. R. Civ. P. 72(b); accord Edwards v. Town of Huntington, No. 05-CV-339, 2007 U.S. Dist. LEXIS 50074, at \*6 (E.D.N.Y. July 11, 2007); McKoy v. Henderson, No. 05 Civ. 1535, 2007 U.S. Dist. LEXIS 15673, at \*1 (S.D.N.Y. March 5, 2007). Although the court is in large measure in full agreement with Magistrate Judge Pollak's findings, the court finds error in certain minor respects. First, the R&R miscalculated the amount of delinquent contributions by \$300.00, which shall be subtracted from that portion of the damage award.<sup>1</sup> Second, the R&R improperly double-counted, as damages, \$375.00 in administrative fees for returned checks, insofar as it included those fees in assessing defendants' unpaid calculations from December 2009 and then added them again as "administrative fees" to the overall damage award. Third, the R&R slightly miscalculated the late-paid contributions owed and assessed them at \$8,265.89 instead of \$8,141.94, an error which affects the calculation of liquidated damages and interest due.<sup>2</sup> See Supplemental Decl. of Noelia E. Jaramillo, Ex. E. Last, the R&R miscalculated the total interest

---

<sup>1</sup> This error appears to have been a simple mathematical error: the R&R calculated the unpaid contributions from December 2009 as \$3,592.84; and it assessed the additional unpaid contributions from October 2010 through June 2011 at \$45,113.94. These figures add up to \$48,706.78, an amount \$300.00 less than the \$49,006.78 figure that the R&R reached.

<sup>2</sup> Using this recalculated figure, the court finds that plaintiffs are entitled to a liquidated damages award of \$11,294.75, which is twenty percent of \$48,331.78 in required contributions and \$8,141.94 in late-paid contributions.

owed. Reassessing the interest owed as of the date of this order, the court finds that it is appropriate to calculate the interest as follows, using an interest rate of 18% per annum:

FUND	DELINQUENT CONTRIBUTIONS	PER DIEM INTEREST RATE	INTEREST AS OF 10/24/11	ADDITIONAL INTEREST TO DATE (72 DAYS)
Welfare	\$17,782.24	\$8.76	\$2,045.08	\$630.72
Pension	\$13,707.04	\$6.71	\$1,566.22	\$483.12
Annuity	\$11,829.62	\$5.83	\$1382.84	\$419.76
Job Training	\$150.48	\$0.09	\$15.27	\$6.48
Vacation/Sick Leave	\$4,862.40	\$2.42	\$566.01	\$174.24
<b>TOTALS</b>	<b>\$48,331.78</b>	<b>\$23.81</b>	<b>\$5575.42</b>	<b>\$1,714.32</b>
<b>TOTAL interest owed on delinquent contributions</b>				<b>\$7289.74</b>

FUND	LATE PAID CONTRIBUTIONS 3/10, 8/10, 9/10	INTEREST OWED
Welfare	\$ 2,990.15	\$81.76
Pension	\$2,200.68	\$60.43
Annuity	\$2,081.56	\$54.74
Job Training	\$28.05	\$0.74
Vacation/Sick Leave	\$841.50	\$22.31
<b>TOTALS</b>	<b>\$8141.94</b>	<b>\$219.98</b>

Summing these amounts, the total interest owed is \$7,509.72.

### CONCLUSION

Subject to the modifications outlined above, the court adopts the R&R as the opinion of the court, pursuant to 28 U.S.C. § 636(b)(1). Plaintiffs are hereby entitled to a total of \$74,091.35 in damages from defendant Interstate as follows: (1) \$48,706.78 in delinquent contributions; (2) \$7,509.72 in interest on the untimely paid contributions; (3) \$11,294.75 in liquidated damages; and (4) \$6,580.10 in attorney's fees and costs. Frantellizzi is jointly and severally liable for \$3,592.24 of the damages assessed for delinquent contributions. In addition, plaintiffs are awarded any additional interest, to be paid at a rate of \$23.81 per day, accruing from January 5, 2012, through the date on which judgment is entered.

SO ORDERED.

/S/

---

Allyne R. Ross  
United States District Judge

Dated: January 4, 2012  
Brooklyn, New York

MAILING LIST

Avram H. Schreiber, Esq.  
40 Exchange Place, Suite 1300  
New York, NY 10005

Interstate Masonry Corp.  
58-17 59<sup>th</sup> Drive  
Maspeth, NY 11378

and

Janine Frantellizzi  
58-17 59<sup>th</sup> Drive  
Maspeth, NY 11378

Magistrate Judge Pollak