

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRICKLAYERS INSURANCE AND WELFARE FUND, BRICKLAYERS PENSION FUND, BRICKLAYERS SUPPLEMENTAL ANNUITY FUND, BRICKLAYERS AND TROWEL TRADES INTERNATIONAL PENSION FUND, NEW YORK CITY AND LONG ISLAND JOINT APPRENTICESHIP AND TRAINING FUND, INTERNATIONAL MASONRY INSTITUTE, and JEREMIAH SULLIVAN, JR., in his fiduciary capacity as Administrator, BRICKLAYERS LOCAL 1, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFT WORKERS, and BRICKLAYERS LABOR MANAGEMENT RELATIONS COMMITTEE,

Plaintiffs,

-against-

ROCKMORE CONTRACING CORP. and
HANOVER INSURANCE GROUP,

Defendants.

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ROCKMORE CONTRACTING CORP.,

Third-Party Plaintiff,

-against-

R. SMITH RESTORATION, INC., and the
ESTATE OF RICHARD SMITH,

Third-Party Defendants.

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BLOCK, Senior District Judge:

MEMORANDUM AND ORDER

Case No. 11-CV-3854 (FB) (RER)

On March 8, 2013, Magistrate Judge Levy issued a report and recommendation (“R&R”) recommending that Rockmore Contracting Corp. (“Rockmore”) be awarded \$45,938.10 in damages on their third-party claims against R. Smith Restoration, Inc. (“R. Smith”), and the Estate of Richard Smith (“the Estate”), plus prejudgment interest through the entry of judgment. The R&R recited that “[a]ny objections to this Report and Recommendation must be filed . . . within fourteen days of receipt hereof,” and that “[f]ailure to file timely objections may waive the right to appeal the District Court’s Order.” R&R at 10.

On March 12th, Rockmore’s counsel served copies of the R&R on R. Smith and the Estate, making objections due by March 26th. To date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. See *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

The R&R contains no error, let alone plain error. Accordingly, the Court adopts it without *de novo* review. The Clerk shall enter judgment in favor of Rockmore and against R. Smith and the Estate, jointly and severally, in the total amount of \$49,766.69 (\$45,938.10 plus \$3,828.59 in prejudgment interest through May 15, 2013).

SO ORDERED.

FREDERIC BLOCK
Senior United States District Judge

May 15, 2013
Brooklyn, New York