

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE LOCAL 522 PENSION FUND
And TRUSTEES OF THE LOCAL 522 WELFARE
FUND OF NEW YORK AND NEW JERSEY,

Plaintiffs,

-against-

TRIBORO BAR & RESTAURANT SUPPLY CO.,
INC.,

X

Defendant.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

12-CV-163 (KAM)(LB)

MATSUMOTO, United States District Judge:

Plaintiffs, Trustees of the Local 522 Pension Fund ("Pension Fund") and Trustees of the Local 522 Welfare Fund of New York and New Jersey ("Welfare Fund") (collectively, the "Funds"), brought this action against Triboro Bar & Restaurant Supply Co., Inc. ("Triboro" or "defendant"), pursuant to Sections 502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132 and 1145, and Section 301 of the Labor Management Relations Act of 1947 ("Taft-Hartley Act"), 29 U.S.C. § 185, seeking to recover certain unpaid contributions due to the Funds. (See generally ECF No. 1, Complaint filed 1/13/12 ("Compl.")) In addition, plaintiffs seek interest on those unpaid contributions, liquidated damages, reasonable attorney's fees, and costs. (Id. at ¶ 24.) On February 24, 2013, the court entered a default judgment against defendant as

to liability. (ECF No. 8, Memorandum and Order dated 2/24/13.) Plaintiffs now move for a judgment as to damages pursuant to Federal Rule of Civil Procedure 55. (ECF No. 10, Amended Motion for Default Judgment filed 3/1/13.) The motion was referred to Magistrate Judge Lois Bloom for a Report and Recommendation ("R&R").

Presently before the court is the R&R issued by Magistrate Judge Bloom on December 27, 2013, recommending this court grant plaintiff's amended motion for a default judgment and enter default judgment against defendant for a total of \$9,616.20, calculated as follows: \$3,930.00 in unpaid contributions due to the Funds; \$210.60 in interest on the unpaid contributions calculated up to the date of the R&R; an additional award of \$210.60 pursuant to 29 U.S.C. § 1132(g)(2)(C); \$4,875.00 in attorney's fees; and \$390 in costs. (ECF No. 15, Report and Recommendation dated 12/27/13 ("R&R") at 11.)

Notice of the R&R was sent electronically to the parties appearing in the docket via the court's electronic filing system on December 27, 2013. As explicitly noted at the end of the R&R, any objections to the R&R were to be filed on or before January 10, 2014. (R&R at 11.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Bloom's R&R have been filed.

In reviewing a Report and Recommendation, the district

court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. State of New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a review of the R&R, and considering that the parties have failed to object to any of Magistrate Judge Bloom's thorough and well-reasoned recommendations, the court finds no clear error in Magistrate Judge Bloom's R&R and hereby affirms and adopts the R&R as the opinion of the court. The court grants plaintiffs' amended motion for default judgment and orders default judgment to be entered against defendant for a total of \$9,627.84, calculated as follows: \$3,930.00 in unpaid contributions due to the Funds; \$216.42 in interest on the unpaid contributions¹; an additional award of \$216.42 pursuant to 29

¹ The R&R recommends that plaintiffs should be awarded interest on the unpaid contributions until the date of the R&R, December 27, 2013 to compensate for the lower interest rate recommended therein. (R&R at 7-8.) Taking into account the R&R's recommendation, the court has calculated the interest on the unpaid contributions until the date of this Order, January 14, 2014. Accordingly, as calculated below, plaintiffs are owed \$216.42 in interest on the unpaid contributions.

Time Period	Units of Time	Rate	Interest due on \$3,930.00
March 15, 2012 - January 14, 2014	670 days	3.0% / 365	\$216.42

U.S.C. § 1132(g)(2)(C); \$4,875.00 in attorney's fees; and \$390 in costs.

Plaintiffs are directed to serve a copy of this Order on defendant at its last known address, and file proof of service on ECF no later than January 20, 2014. The Clerk of Court is respectfully requested to enter judgment in accordance with this Order and to close this case.

SO ORDERED.

Dated: January 14, 2014
Brooklyn, New York

_____/s/_____
Kiyo A. Matsumoto
United States District Judge
Eastern District of New York