

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOARD OF TRUSTEES OF UNITED UNION OF
ROOFERS, WATERPROOFERS & ALLIED
WORKERS LOCAL UNION NO. 8 ANNUITY,
PENSION, SUMMER BENEFIT, WINTER
BENEFIT, AND WELFARE FUNDS,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

13-CV-3807 (KAM)(LB)

Plaintiff,

-against-

J. MURPHY ROOFING & SHEET METAL, INC.
and THOMAS J. MURPHY,

Defendants.

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MATSUMOTO, United States District Judge:

On July 9, 2013, plaintiff Board of Trustees of United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 Annuity, Pension, Summer Benefit, Winter Benefit and Welfare Funds ("plaintiff") commenced this action against defendants J. Murphy Roofing & Sheet Metal, Inc. ("employer") and Thomas J. Murphy ("Mr. Murphy") (collectively, "defendants"), pursuant to §§ 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. §§ 1132 and 1145, and § 301 of the Labor Management Relations Act of 1947, as amended 29 U.S.C. § 185, seeking to recover unpaid fringe benefits contributions, along with interest, liquidated damages, and attorneys' fees and costs. (See generally ECF No. 1, Compl.)

On September 16, 2014, the court referred plaintiff's

first motion for entry of a default judgment to Magistrate Judge Lois Bloom for a Report and Recommendation. (Order Referring Mot., dated 9/16/14.) Judge Bloom marked the motion withdrawn without prejudice to renew, because plaintiff failed to submit appropriate documentation in support of its application for damages. (Scheduling Order, ECF No. 9, dated 12/15/14.) On January 12, 2015, plaintiff again moved for default judgment (Pl.'s Sec. Mot. Default J., ECF No. 10) and the court referred the motion to Judge Bloom for report and recommendation (Order Referring Mot., dated 1/13/15). Judge Bloom's Report and Recommendation directed plaintiff to serve a copy of the Report and Recommendation on defendants and to file proof of service with the court. (See R&R at 14-15.)

On August 6, 2015, in light of plaintiff's failure to file proof of service on defendants, the court ordered plaintiff to serve a copy of the Report and Recommendation on defendants at their last known address by August 7, 2015. (Order, dated 8/6/15.) Plaintiff filed a certificate of service certifying that on August 7, 2015 the Report and Recommendation was served by United States mail to defendants' last known address. (ECF No. 12.)

The Report and Recommendation notified the parties of the right to file written objections within fourteen (14) days of receipt of the Report and Recommendation. (R&R at 15.)

Accordingly, the deadline for defendants to file objections was August 24, 2015¹. To date, no objections to the Report and Recommendation have been filed. (*See generally* Docket No. 13-CV-3807.)

A district court reviews those portions of a Report and Recommendation to which a party has timely objected under a *de novo* standard of review and "may accept, reject, or modify, in whole or in part, the findings or recommendations . . ." 28 U.S.C. § 636(b)(1)(C). However, where no objections to the Report and Recommendation have been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. 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 careful review of the record and Judge Bloom's well-reasoned and precisely calculated Report and Recommendation, the court finds no clear error and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court. Accordingly, judgment should be entered against defendant J. Murphy Roofing & Sheet Metal, Inc. as follows:

- (1) \$516,618.64 in unpaid benefit contributions;
- (2) \$61,994.24 in interest;
- (3) \$103,323.73 in liquidated damages;

¹ The court adds three days pursuant to Federal Rule of Civil Procedure 6(d).

(4) \$2,140.00 in attorney's fees; and

(6) \$400 in costs.

Additionally, for the reasons set forth in Judge Bloom's Report and Recommendation, motion for default judgment against defendant Thomas J. Murphy is denied.

Plaintiff's counsel is ordered to serve a copy of this order upon all defendants at their last known address and file proof of service by September 22, 2015. The Clerk of the Court is respectfully requested to enter judgment against employer J. Murphy Roofing and Sheet Metal, Inc. in accordance with this order. The plaintiff shall advise the court no later than September 30, 2015 by status letter filed on ECF as to how it intends to proceed with its claims against defendant Thomas J. Murphy. In light of plaintiff's history of failure to comply with court orders, they are notified that failure to comply with this court's orders to serve defendants by September 22, 2015 and for a status letter by September 30, 2015 will result in sanctions, including but not limited to monetary sanctions and dismissal.

SO ORDERED.

Dated: September 18, 2015
Brooklyn, New York

_____/s/
Kiyo A. Matsumoto
United States District Judge