

D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE LOCAL 813 PENSION TRUST
FUND,

Plaintiffs,

-against-

HIGHBUILT CONTRACTING CORP., HIGHBUILT
CONSTRUCTION CORP., HIGHBUILT
ENTERPRISES CORP., ALAGNA ASSOCIATES
CORP. d/b/a HIGH BUILT DRY WALL CORP., and
XYZ CORPORATIONS 1-10,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

ORDER

14-CV-2099 (NGG) (JO)

On April 2, 2014, Trustees of the Local 813 Pension Trust Fund (“Plaintiffs”)—representing a multiemployer, labor-management trust fund constituting both a employee benefit plan and a multiemployer benefit plan within the meaning of sections 3(3) and 3(37) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(3), (37)—initiated this action against Defendants Highbuilt Contracting Corp., Highbuilt Construction Corp., Highbuilt Enterprises Corp., Alagna Associates Corp. (doing business as High Built Dry Wall Corp.) and other unnamed entities. (Compl. (Dkt. 1).) Plaintiffs seek to collect damages arising from Defendants’ alleged failure to make timely payment of their withdrawal liability to the fund pursuant to 29 U.S.C. §§ 1381-1405, 1451. (Id. ¶ 1.)

After Defendants failed to answer or appear in this case, Plaintiffs moved for default judgment on July 15, 2014. (Mot. for Default J. (Dkt. 10).) By Order dated July 17, 2014, the court referred the motion for default judgment to Magistrate Judge James Orenstein for a report and recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil

Procedure 72(b)(1), addressing both liability and damages. (See Order (Dkt. 11).) On August 21, 2014, Judge Orenstein held a hearing in connection with Plaintiffs' motion; only counsel for Plaintiffs appeared. (Aug. 21, 2014, Min. Entry (Dkt. 15).) On March 10, 2015, Judge Orenstein issued an R&R recommending that the court grant Plaintiffs' motion for default judgment and direct the entry of judgment against all Defendants jointly and severally in the following amounts: (1) \$157,132.00 in withdrawal liability; (2) \$16,635.13 in interest on Defendants' withdrawal liability; (3) \$31,426.40 in liquidated damages; (4) \$3,379.00 in attorneys' fees; and (5) \$510.00 in costs. (R&R at 14.)

No party has objected to Judge Orenstein's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 14 ("Any objections to this Report and Recommendation must be filed no later than March 27, 2015. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court's order.")) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court ADOPTS IN FULL the R&R. See Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007) (summary order).

Accordingly, the court GRANTS Plaintiffs' motion for default judgment against Defendants, jointly and severally. The court AWARDS Plaintiffs: (1) \$157,132.00 in withdrawal liability; (2) \$16,635.13 in interest on Defendants' withdrawal liability; (3) \$31,426.40 in liquidated damages; (4) \$3,379.00 in attorneys' fees; and (5) \$510.00 in costs. The Clerk of Court is respectfully DIRECTED to enter judgment and close this case.

SO ORDERED.

Dated: Brooklyn, New York
March 31, 2015

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFI
United States District Judge