

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 10 2019 ★

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TRUSTEES OF THE LOCAL 813 INSURANCE TRUST :
FUND, TRUSTEES OF THE LOCAL 813 SAVINGS AND :
THRIFT FUND, AND TRUSTEES OF THE NURSES :
AND LOCAL 813 IBT RETIREMENT PLAN, :

BROOKLYN OFFICE

ORDER

Plaintiff, :

18-cv-737 (ENV) (RER)

-against- :

ALL COUNTY FUNERAL SERVICE, INC., x

Defendant.

VITALIANO, D.J.

Trustees of the Local 813 Insurance Fund, Trustees of the Local 813 Savings and Thrift Trust Fund, and Trustees of the Nurses and Local 813 IBT Retirement Plan (collectively “Trustees”) commenced this action against All County Funeral Service, Inc. (“Company”) on February 2, 2018 pursuant to § 515 of the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended (29 U.S.C. § 1145), alleging that, in violation of ERISA, defendants failed to pay contributions pursuant to a governing collective bargaining agreement.

To date, defendants have failed to answer or respond to the complaint. On November 29, 2018, plaintiffs requested a certificate of default, Dkts. 7-8, which the Clerk of Court issued on November 30, 2018. Plaintiffs moved for default judgment on January 8, 2019. Dkts. 9, 11. The Court referred the motion to Magistrate Judge Ramon E. Reyes, Jr. for a Report & Recommendation (“R&R”) on the same day. *See* Order Referring Motion, dated Jan. 8, 2019.

Judge Reyes issued his R&R on August 7, 2019. Dkt. 12. The R&R recommends that the motion for default judgment be granted and the request for damages and attorneys' fees and costs be denied, without prejudice to renew. Notice of time to object to the R&R was given. *See* R&R at 11. No party has filed any objection.¹

Discussion

Where no party has objected to a magistrate judge's report and recommendation, clear error review applies. *See Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). Having carefully reviewed the R&R in accordance with this standard, the Court finds it to be correct, well-reasoned and free of any clear error. The Court, therefore, adopts the R&R, in its entirety, as the opinion of the Court.

Conclusion

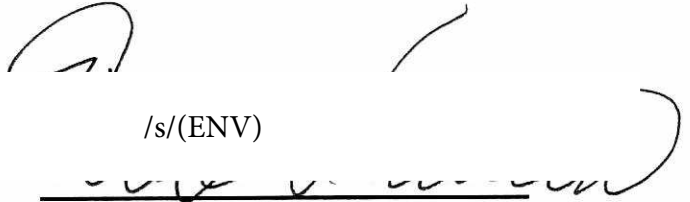
For the foregoing reasons, the R&R is adopted, in its entirety, as the opinion of the Court. Plaintiffs' motion for default judgment is granted, but only as to the propriety of entering judgment on default. For the deficiencies in plaintiffs' submissions, as noted in the R&R, plaintiffs' demand for damages, interest, costs and attorneys' fees is denied without prejudice to renewal after proper submissions and after inquest.

¹ The record reflects that all parties had notice of the R&R as of August 8, 2019. Dkt. 13.

The parties are respectfully referred to Magistrate Judge Reyes for further pre-trial management of this litigation.

So Ordered.

Dated: Brooklyn, New York
September 26, 2019


/s/(ENV)

ERIC N. VITALIANO
United States District Judge