

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE
CARPENTERS ANNUITY, APPRENTICESHIP,
LABOR-MANAGEMENT COOPERATION,
PENSION AND WELFARE FUNDS,

Plaintiffs,

-against-

ORDER

12 CV 5660 (DRH) (GRB)

MILLER FLOOR COVERING, INC.
f/k/a CONDOS FLOOD COVERING, INC.,

Defendant.

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HURLEY, Senior District Judge:

Plaintiffs Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds commenced this action on November 16, 2012, seeking confirmation of an arbitration award pursuant to Section 9 of the United States Arbitration Act, 9 U.S.C. § 9, Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(3), and Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), against defendant Miller Floor Covering, Inc. f/k/a Condos Flood Covering, Inc., plus interest, and attorney's fees and costs in this action. Defendant did not answer the Complaint or otherwise appear in this action. After defendant's default was noted by the Clerk of Court pursuant to Federal Rule of Civil Procedure ("Rule") 55(a), plaintiffs moved for entry of a default judgment under Rule 55(b). On February 13, 2013, this motion was referred to United States Magistrate Judge Gary R. Brown to issue a Report and Recommendation as to whether plaintiffs have demonstrated the allegations in the Complaint establishing the defendant's liability such that the motion for default should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded.

On August 30, 2013, Judge Brown issued a Report and Recommendation which recommended that the Court: confirm the arbitration award; award monetary damages of \$39,861.31 and direct defendant to submit to an audit, as set forth in the arbitration award; award interest on the delinquent contributions at the monthly rate of .75%, compounded, from the date of the arbitration award to the date of judgment; and, award \$1,638.00 in attorney's fees and costs related to this action. More than fourteen days have elapsed since service of the Report and Recommendation and no party has filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the August 30, 2013 Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the August 30, 2013 Report and Recommendation is adopted as if set forth herein, and plaintiffs' motion for a default judgment is granted. The Court hereby confirms the arbitration award, directs defendant to submit to an audit, as set forth in the arbitration agreement, and directs that plaintiffs recover damages from defendant for the amounts itemized below, and that judgment be entered accordingly:

- (i) \$39,861.31 in monetary damages;
- (ii) Interest on the delinquent contributions at the monthly rate of .75%, compounded, from the date of the arbitration award to the date of judgment; and
- (iii) \$1,638.00 in attorney's fees and costs related to this action.

Upon entry of judgment, the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
September 24, 2013

/s/
Denis R. Hurley
United States District Judge