

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
AMTRUST BANK,

Plaintiff,

-against-

ORDER

12 CV 5958 (DRH) (AKT)

GARY A. HORN, ESQ., LEGEND LAND
SERVICES, LLC, and NMR ADVANTAGE
ABSTRACT, LTD.,

Defendants.

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HURLEY, Senior District Judge:

Plaintiff Federal Deposit Insurance Corporation, in its capacity as Receiver for AmTrust Bank, F.S.B. ("Plaintiff" or "FDIC"), commenced this action on December 3, 2012, against Gary A. Horn, Esq. ("Horn"), Legend Land Services, LLC ("Legend"), and NMR Advantage Abstract, Ltd. ("NMR"), for breach of contract, breach of fiduciary duty, attorney malpractice, negligent misrepresentation, and negligence. Legend and NMR did not answer the Complaint or otherwise appear in this action. After Legend's and NMR's defaults were noted by the Clerk of Court pursuant to Federal Rule of Civil Procedure ("Rule") 55(a), Plaintiff moved for entry of a default judgment against Legend and NMR under Rule 55(b). On April 3, 2013, this motion was referred to United States Magistrate Judge A. Kathleen Tomlinson to issue a Report and Recommendation as to whether Plaintiff has demonstrated the allegations in the Complaint establishing the liability of Legend and NMR such that the motion for default judgment should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded.

On February 14, 2014, Judge Tomlinson issued a Report and Recommendation which

recommended that the Court enter a default judgment against defendants Legend and NMR as to liability for Plaintiff's negligence claims and that the calculation of damages against defendants Legend and NMR be deferred pursuant to Plaintiff's request. 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 February 14, 2014 Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Accordingly, the February 14, 2014 Report and Recommendation is adopted as if set forth herein, and Plaintiff's motion for a default judgment against defendants Legend and NMR as to liability for Plaintiff's negligence claims is granted. The Court hereby directs that the calculation of damages against defendants Legend and NMR be deferred until such time Plaintiff proves damages.

SO ORDERED.

Dated: Central Islip, New York
March 25, 2014

/s/
Denis R. Hurley
Unites States Senior District Judge