

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

15 CV 247 (DRH) (AYS)

ROCHESTER ACOUSTICAL CORP.,

Defendant.

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HURLEY, Senior District Judge:

Plaintiffs Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds (“Plaintiffs”) commenced this action against defendant Rochester Acoustical Corporation (“Defendant”) pursuant to Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185; Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1132(a)(3); and Section 9 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 9. The Plaintiffs seek confirmation of two separate arbitration awards against Defendant, referred to herein as the “Audit Award” and the “Collection Award,” which both determined that Defendant owed benefit contributions to the Funds pursuant to a collective bargaining agreement.

After the 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 May 1, 2015, the default motion was referred to United States Magistrate Judge Anne Y. Shields to issue a Report and Recommendation as to whether 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 25, 2015, Judge Shields issued a Report and Recommendation which recommended that the Court confirm the arbitration awards, specifically the \$288,884.46 Audit Award and the \$111,397.05 Collection Award. The Report and Recommendation also recommended enforcing part of the Collection Award providing for 10% interest per annum on a \$900 attorneys' fee award, calculated from November 19, 2014 onward as well as awarding Plaintiffs \$2,088.50 in attorneys' fees and costs arising out of 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 Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Therefore, the Court adopts the Report and Recommendation of Judge Shields as is set forth therein. Accordingly, the Court hereby directs that default judgment be entered in favor of Plaintiffs and against Defendant in the amounts described above. Additionally, Defendant and its officers are to make available to Plaintiffs or Plaintiffs' authorized representatives, within 30 days of this Order, any and all books and records Plaintiffs deem necessary to conduct an audit under the terms of the CBA. Upon entry of judgment, the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
March 17, 2016

/s/
Denis R. Hurley
United States District Judge