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BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALAN L. FRANK LAW ASSOCIATES, P.C.,

Plaintiff,

-against-

OOO RM INVEST, VARWOOD HOLDINGS, LTD.,
TCAHAI HAIRULLAEVICH KATCAEV, SASHA
SCHMDT and SERGEY PIROZHNIKOV,

Defendants.

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OOO RM INVEST, VARWOOD HOLDINGS, LTD.,
and TCAHAI HAIRULLAEVICH KATCAEV,

Counter Plaintiffs,

-against-

ALAN L. FRANK LAW ASSOCIATES, P.C., ALAN L.
FRANK, and EUGENE A. KHAVINSON,

Counter Defendants.

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NICHOLAS G. GARAUFGIS, United States District Judge.

On February 22, 2016, Plaintiff Alan L. Frank Law Associates, P.C. (the "Frank Firm") filed an interpleader complaint in this court against Defendants OOO RM Invest ("RM"), Varwood Holdings, Ltd. ("Varwood"), Tcahai Hairullaevich Katcaev ("Katcaev," and together with RM and Varwood, the "Settling Parties"), Sasha Schmdt ("Schmdt"), and Sergey Pirozhnikov ("Pirozhnikov"). (Compl. (Dkt. 1).) The Complaint sought to have the court resolve a dispute concerning the appropriate distribution of certain settlement proceeds paid into the Frank Firm's Interest on Lawyer Trust Account ("IOLTA") pursuant to a settlement agreement. (Id.) On June 24, 2016, the case was transferred to the United States District Court

for the Southern District of Florida, and on July 1, 2016, the Frank Firm deposited the majority of the settlement funds into the Registry of the Florida court, retaining a portion of those funds as attorneys' fees and costs. (Clerks Receipt (Dkt. 67); Pl. Renewed Mot. for Discharge and Att'ys' Fees and Costs ("Renewed Mot.") (Dkt. 214) at 4.) On October 25, 2016, the Frank Firm moved for discharge and an award of attorneys' fees and costs incurred in bringing the interpleader action. (Pl. Mot. for Discharge and Att'ys' Fees and Costs (Dkt. 131).) On December 1, 2016, Magistrate Judge John J. O'Sullivan issued a report and recommendation (the "O'Sullivan R&R"), recommending that the motion be denied. (O'Sullivan R&R (Dkt. 148).) On December 16, 2016, having received no objections, District Judge Cecilia M. Altonaga entered an order adopting the O'Sullivan R&R and denying the Frank Firm's motion for discharge and attorneys' fees. (Order Adopting O'Sullivan R&R (Dkt. 154).)

On February 28, 2017, Judge Altonaga entered an order transferring this case back to the Eastern District of New York. (Order Transferring Case (Dkt. 193).) The Frank Firm then renewed its motion for discharge. The renewed motion was fully briefed on May 22, 2017. (Renewed Mot.; Settling Parties' Mem. in Opp. to Pl.'s Renewed Mot. (Dkt. 215); Schmdt and Pirozhnikov Statement of Non-Opp. to Renewed Mot. (Dkt. 216); Pl. Reply in Supp. of Renewed Mot. (Dkt. 217).) Judge Sandra J. Feuerstein referred the renewed motion to Magistrate Judge Arlene R. Lindsay for a report and recommendation. (May 24, 2017, Order Referring Mot.)¹ On October 22, 2018, Judge Lindsay issued a report and recommendation (the "Lindsay R&R"), in which she recommended that the court deny Plaintiff's motion in its entirety.² (Lindsay R&R (Dkt. 249) at 1, 15.)

¹ The case was reassigned to the undersigned on December 13, 2017. (Dec. 13, 2017, Order Reassigning Case.)

² A full procedural history of this case is set forth in the Lindsay R&R. (Lindsay R&R at 2-12.)

No party has objected to the Lindsay R&R and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). The court therefore reviews the Lindsay R&R for clear error. See Wider v. Colvin, 245 F. Supp. 3d 381, 385 (E.D.N.Y. 2017) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”); see also Porter v. Potter, 219 F. App’x 112 (2d Cir. 2007) (summary order) (“[F]ailure to object timely to a magistrate’s report operates as a waiver of any further judicial review of the magistrate’s decision.” (internal citation omitted)).

Finding no clear error in the Lindsay R&R, the court ADOPTS IN FULL the Lindsay R&R. The court DENIES Plaintiff’s renewed motion for discharge and attorneys’ fees.

SO ORDERED.

Dated: Brooklyn, New York
December 17, 2018

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