

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DONNA CLARK,

Plaintiff,

**1:09-cv-716
(GLS/CFH)**

v.

**NEW YORK STATE OFFICE OF THE
STATE COMPTROLLER et al.,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Donna Clark
Pro Se
43 Raymo Street
Albany, NY 12209

FOR THE DEFENDANTS:

State Defendants

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
The Capitol
Albany, NY 12224

KELLY L. MUNKWITZ
Assistant Attorney General

CSEA Defendants

Civil Service Employees Association, Inc.
143 Washington Avenue
P.O. Box 7125, Capitol Station
Albany, NY 12224

DAREN J. RYLEWICZ, ESQ.

Defendant John Wapner

Furman, Kornfeld Law Firm
61 Broadway
26th Floor, Suite 403
New York, NY 10006

KATHRYN C. COLLINS, ESQ.
NEIL S. KORNFELD, ESQ.

Gary L. Sharpe
Chief Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff pro se Donna Clark commenced this action against various defendants on June 23, 2009. (See Compl., Dkt. No. 1.) On August 31, 2012, Magistrate Judge David Homer issued an Order which directed state defendants¹ Jeanine Dominique and Celia Gonzales to serve written responses to “deposition questions” posed by Clark. (Dkt. No. 111.) Pending is the state’s objection to Judge Homer’s Order. (See Dkt. No. 114.) For the reasons that follow, defendants’ objection is denied.

II. Standard of Review

When reviewing an objection to a pretrial non-dispositive motion decided by a magistrate judge, the court will not disturb such an order unless it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). This standard governs a district court’s review of a

¹This objection is only filed on behalf of these two state defendants.

magistrate judge's orders concerning discovery disputes. See *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 525 (2d Cir. 1990). Under a clearly erroneous standard, a district court can reconsider a magistrate judge's order only if the court "is left with the definite and firm conviction that a mistake has been committed." See *Gualandi v. Adams*, 385 F.3d 236, 240 (2d Cir. 2004) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Under a contrary to law standard, a district court can reverse a magistrate judge's order only if the order fails to apply the relevant law. See *Olais-Castro v. United States*, 416 F.2d 1155, 1158 n.8 (9th Cir. 1969) ("The term contrary to law means contrary to any existing law." (internal quotation marks and citation omitted)). "[M]agistrate judges are afforded broad discretion in resolving non-dispositive disputes and reversal is appropriate only if their discretion is abused." *Am. Stock Exch., LLC v. Mopex, Inc.*, 215 F.R.D. 87, 90 (S.D.N.Y. 2002).

III. Discussion

A. Defendants' Objections

Upon review of the state defendants' letter objections, (see Dkt. No. 114), and having read the transcript of the August 30, 2012, hearing held before Judge Homer, (see Dkt. No. 122), the court affirms Judge Homer's

decision. In summary, Judge Homer's ruling was well within his discretion, compelling the defendants to answer written deposition questions in writing and sworn under oath was not clearly erroneous or contrary to law.

IV. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that the defendants' objection (Dkt. No. 114) is **DENIED** and Magistrate Judge Homer's August 31, 2012 order (Dkt. No. 111) is **AFFIRMED**; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-Decision and Order to the parties.

IT IS SO ORDERED.

Dated: November 21, 2012
Albany, New York


Gary L. Sharp
Chief Judge
U.S. District Court