

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DOC #:
DATE FILED: September 28, 2016

JOHN D. HOWARD, individually and as
assignee of Jaime Frankfurt, LLC,

Plaintiff,

- against -

ANN FREEDMAN, GLAFIRA ROSALES,
KNOEDLER GALLERY, LLC, d/b/a
KNOEDLER & COMPANY, MICHAEL
HAMMER, 8-31 HOLDINGS, INC., JOSE
CARLOS BERGANTINOS DIAZ, and
JAIME R. ANDRADE,

Defendants.

ORDER

12 Civ. 5263 (PGG) (HBP)

PAUL G. GARDEPHE, U.S.D.J.:

This action arises from Plaintiff's purchase of a forged painting from Defendant Knoedler Gallery, LLC ("Knoedler"). The only remaining claims are against Glafira Rosales – against whom the Court entered default on January 31, 2014 (Dkt. No. 224) – and Jose Carlos Bergantinos Diaz – against whom the Court entered default on February 10, 2014 (Dkt. No. 228). The Court referred the matter to Magistrate Judge Henry Pitman for an inquest into damages. (Dkt. Nos. 224, 228)

On July 21, 2016, Judge Pitman issued a report and recommendation ("R & R") "recommend[ing] that judgment be entered for plaintiff against Rosales and Diaz, jointly and severally, in the amount of \$10.5 million under 18 U.S.C. § 1964(c), plus prejudgment interest on \$3.5 million at a rate of 9% per annum from June 13, 2007 to the date of entry of judgment under N.Y. C.P.L.R. §§ 5001, 5004." (R&R (Dkt. No. 395) at 29) In his R & R, Judge Pitman also informed the parties that they had fourteen days from service of the R & R to file any

objections, pursuant to Rule 72 of the Federal Rules of Civil Procedure, and that failure to do so could result in waiver of review. (Id. at 29-30)

No party has objected to the R & R. Accordingly, the parties have waived their rights to review by this Court. See Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s Report and Recommendation if the party fails to file timely objections designating the particular issue.”); see also Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistratc’s decision.”)

This Court has nonetheless reviewed Judge Pitman’s well-reasoned R & R and is satisfied that “there is no clear error on the face of the record.” Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). In making his recommendations, Judge Pitman carefully applied the correct standards for determining damages for each claim. Accordingly, the R & R’s recommendations are adopted in their entirety and judgment will be entered against Defendants Rosales and Bergantinos Diaz as set forth below.

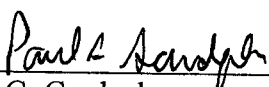
CONCLUSION

Judge Pitman’s July 21, 2016 R & R (Dkt. No. 395) is adopted by this Court. The Clerk of the Court is respectfully directed to enter judgment in favor of Plaintiff as against Defendants Glafira Rosales and Carlos Bergantinos Diaz, jointly and severally, in the amount of \$10.5 million, plus prejudgment interest on \$3.5 million at a rate of 9% per annum from June 13, 2007 to the date of entry of judgment. The Clerk of the Court is further directed to terminate any

outstanding motions and to close this case.

Dated: New York, New York
September 28, 2016

SO ORDERED.



Paul G. Gardephe
United States District Judge