

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES MISSEL,

Plaintiff,

10-CV-6380

v.

**DECISION
and ORDER**

COUNTY OF MONROE, JOHN DOE DEPUTIES
1-5; in Their Official and Individual
Capacities, and MICHAEL HILDRETH,

Defendant.

By Order dated August 17, 2011, I granted plaintiff James Missel's motion for default judgment against defendant Michael Hildreth ("Hildreth"), and referred the matter to United States Magistrate Judge Jonathan W. Feldman for the purpose of determining the amount, if any, of plaintiff's damages. Pursuant to my August 17, 2011 Decision and Order, Judge Feldman conducted a hearing on the issue of plaintiff's damages, and by Report and Recommendation dated September 5, 2014, recommended that plaintiff be awarded \$500.00 in damages against defendant Hildreth. Neither party has objected to the Report and Recommendation issued by Judge Feldman. Because neither party has filed an objection to the September 5, 2014 Report and Recommendation, the parties have waived their rights to de novo review pursuant to 28 U.S.C. § 636(b)(1). U.S. v. Male Juvenile, 121 F.3d 34 (2nd Cir. 1997). Additionally, the Second Circuit has by rule adopted the position that where the parties have received notice of the consequences of

failing to object to a Magistrate Judge's Report and Recommendation, such a failure will preclude any further review of a Decision adopting a Magistrate Judge's Report and Recommendation. Id. See also, Small v. Secretary of Health and Human Services, 892 F.2d 15 (2nd Cir. 1989) ("failure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision"). Accordingly, I may only review Magistrate Feldman's Report and Recommendation for clear error.

For the reasons set forth in Judge Feldman's September 5, 2014 Report and Recommendation, I find that Judge Feldman properly determined that plaintiffs' damages are compensable by an award of \$500.00. Because there is no clear error of law or fact in the Magistrate's Report and Recommendation, I adopt Judge Feldman's Report and Recommendation in its entirety, and direct that the Clerk of the Court issue a judgment in favor of James Missel in the amount of \$500.00

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

Michael A. Telesca
United States District Judge

DATED: Rochester, New York
October 1, 2014