

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In Re:

ARACELI TRONCONE,

Debtor.

MARK S. WALLACH, TRUSTEE,

Case # 17-CV-6619-FPG

Plaintiff,

v.

DECISION & ORDER

MARCELLO TRONCONE,

Defendant.

INTRODUCTION

Plaintiff Mark S. Wallach, Trustee (“Plaintiff”) requested entry of judgment by default against Defendant Marcello Troncone (“Defendant”) in a proceeding before Hon. Carl J. Bucki, Chief United States Bankruptcy Judge for the Western District of New York. ECF No. 1. Judge Bucki determined that the proceeding was a “non-core proceeding” and thus concluded that the Bankruptcy Court was without authority to enter a final or dispositive order or judgment. *Id.* In an August 4, 2017 Order, combined with findings of fact, conclusions of law and a recommendation regarding Plaintiff’s request for entry of judgment by default (“Order and Recommendation”), Judge Bucki directed the Clerk of Court to transmit Plaintiff’s request to this Court for consideration pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984). *Id.* Specifically, Judge Bucki’s Order and Recommendation recommends that this Court award Judgment by Default to Plaintiff and against Defendant in the total amount of \$5,422.14. *Id.* Defendant has not filed any objections to Judge Bucki’s Order and Recommendation.

LEGAL STANDARD

28 U.S.C. § 157(c) authorizes a bankruptcy court to hear “non-core proceedings—*i.e.*, proceedings that are not . . . core but are otherwise related to a case under title 11”—and to “submit proposed findings of fact and conclusions of law to the district court.” *See Exec. Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2167 (2014) (quoting 28 U.S.C. § 157(c)(1)) (internal quotation marks omitted). In addition, § 157(c) prescribes that “any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.” 28 U.S.C. § 157(c).

Rule 9033(d) states that “the district judge shall make a *de novo* review upon the record, or after additional evidence of any portion of the bankruptcy judge’s finding of facts or conclusions of law to which *specific written objection* has been made in accordance with this rule” FED. R. BANKR. P. 9033(d) (emphasis added). An objecting party must file such an objection within 14 days after he has been served with a copy of the proposed findings of fact and conclusions of law.¹ *Id.* at 9033(b).

Thus, a party’s failure to timely file any objection under Rule 9033 is sufficient to support a finding that the party has waived his objections and affirmation of the order at issue is appropriate. *See Messer*, 510 B.R. 31, at 38 (citing *In re Ionosphere Clubs, Inc. v. Shugrue* (In re Ionosphere Clubs, Inc.), No. 94 CIV 0659(MBM), 1996 WL 361531, at *1 (S.D.N.Y. June 28, 2016)).

Since no objections have been filed, the Court accepts and adopts Judge Bucki’s Order and Recommendation in its entirety.

¹ These rules, and the procedures they prescribe, are similar to the rules and procedures governing objections to orders or findings of magistrate judges and the case law that has developed in this area is analogous to the case law on objections to a magistrate judge’s orders or findings. *See Messer v. Peykar Int’l Co., Inc.*, 510 B.R. 31, 39 n. 1 (S.D.N.Y. 2014) (citing Fed. R. Civ. P. 72(b)).

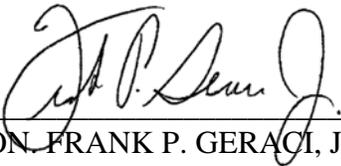
CONCLUSION

Based on the annexed "Order and Recommendation" of Judge Bucki (ECF No. 1), and for the reasons stated above, this Court ORDERS, ADJUDGES and DECREES, that Judgment by Default, pursuant to Rule 55 of the Federal Rules of Civil Procedure, be entered in favor of Plaintiff, and against Defendant, in the amount of \$5,422.14.

The Clerk shall enter judgment accordingly, and close this case.

IT IS SO ORDERED.

Dated: September 18, 2017
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court