

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,
v.

CASE NO: 6:16-cr-19-Orl-41TBS

WILLIAM JAMES LEACH

Defendant

And

NEW ENGLAND CARPENTERS
BENEFIT FUNDS,

Garnishee.

REPORT AND RECOMMENDATION

Pending before the Court is the United States' Motion for Final Order of Continuing Garnishment (Doc 70). Upon due consideration, I respectfully recommend that the motion be GRANTED.

I. Background

Pursuant to the Federal Debt Collection Procedures Act, the United States filed an Application for Writ of Continuing Garnishment for 25% of Defendant, William James Leach's monthly pension to be applied toward his outstanding restitution (Doc. 63). The application was granted (Doc. 64), and the Clerk issued a Writ (Doc. 65). Mr. Leach was served on March 20, 2018 (Doc. 69), and he has not filed any written objections or requested a hearing. See 28 U.S.C. § 3205(c)(5). Garnishee has answered the Writ and stated that New England Carpenters Benefit Fund will pay and continue to pay Leach \$1,322.00 per month for the remainder of his life (Doc. 67). The United States now seeks,

pursuant to 28 U.S.C. § 3205(c)(7), entry of a Final Order of Continuing Garnishment against Mr. Leach's nonexempt interest and to pay over to the United States 25% of his pension per month.

II. Discussion

The Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. § 3001 *et seq.*, "provides the exclusive civil procedures for the United States to obtain satisfaction of a judgment in a criminal proceeding that imposes a fine, assessment, penalty, or restitution." United States v. Peters, 783 F.3d 1361, 1363 (11th Cir. 2015) (citations omitted). The FDCPA provides the United States several remedies to satisfy a judgment, including garnishment. See Id.; 28 U.S.C. §§ 3202, 3205. Under Section 3205, a "court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor." 28 U.S.C. § 3205(a).

In this case, it appears that the Government has complied with the provisions of Sections 3202 and 3205; all items required by statute have been prepared, filed with the court, and served on the judgment debtor and the garnishee. Defendant Leach has not requested a hearing nor has he filed any objections to the Writ of Continuing Garnishment. 28 U.S.C. § 3205(c)(7) provides that if no hearing is requested within twenty (20) days after the defendant receives the garnishee's answer to the Writ, the Court may enter an order directing the garnishee as to the disposition of the judgment debtor's interest in the property. Because no objections have been filed to the Writ of Continuing Garnishment, and it is otherwise in order, it is appropriate for the Court to

enter a Final Order of Continuing Garnishment against Leach's nonexempt interest with respect to the pension.

III. Recommendation

Upon consideration of the foregoing, I respectfully recommend that:

1. The motion be **GRANTED**;
2. Garnishee New England Carpenters Benefit Funds be directed to pay over to the United States 25% of Leach's pension, per month, for the application toward the payment of the outstanding restitution judgment imposed.
3. The payment should be made payable to "Clerk, United States District Court," and mailed to:
Clerk, United States District Clerk
ATTN: DCU
401 West Central Boulevard, Suite 1200
Orlando, Florida 32801
Also, the check should bear the notation "William Leach, Case No. 6:16-cr-19-Orl-41TBS."

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

RESPECTFULLY RECOMMENDED at Orlando, Florida on May 3, 2018.


THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Presiding United States District Judge
Counsel of Record

Any Unrepresented Parties