

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-80477-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

v.

MARIO THEODULE, et al.,

Defendants.

ORDER GRANTING THE RECEIVER'S MOTION FOR DEFAULT JUDGMENT

THIS CAUSE comes before the court upon the Receiver's motion for default judgment against defendant Smart Investment Management Services, LLC [DE # 56].

This is an action to avoid and recover allegedly fraudulent transfers. On March 25, 2009, the Receiver filed the complaint [DE # 1]. Defendant Smart Investment Management Services, LLC was served with process on May 2, 2009 [DE # 45]. Defendant failed to respond to the complaint, and the Receiver moved for entry of clerk's default on February 23, 2010 [DE # 46]. A clerk's default was entered on March 10, 2010 [DE # 53]. On June 23, 2010, the Receiver filed the instant motion for default judgment.

Pursuant to Fed. R. Civ. P. 55(b), judgment by default may be entered by the court upon an application by the party entitled to default judgment. District courts have "the authority to enter default judgment for failure to prosecute with reasonable diligence or to comply with its orders or rules of procedure." *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). "The exercise of the authority is discretionary and is subject to review for abuse of discretion." *Id.* "Entry of judgment by default is a drastic remedy which should be used only in extreme situations, as the court has

available to it a wide range of lesser sanctions.” *Id.* There is a strong preference that cases be heard on the merits instead of imposing sanctions that deprive a litigant of his day in court. *Id.*

After reviewing the Receiver’s motion for default judgment and the entire record in this case, the court concludes that no lesser sanctions will suffice, and that entry of default judgment is warranted in this case.

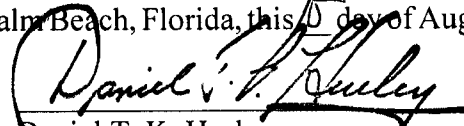
The Receiver seeks \$35,000 in damages from defendant. “Although a defaulted defendant admits well-pleaded allegations of liability, allegations relating to the amount of damages are not admitted by virtue of default. Rather, the Court determines the amount and character of damages to be awarded.” *Miller v. Paradise of Port Rickey, Inc.*, 75 F.Supp.2d 1342, 1346 (M.D.Fla.1999). The court is not required to hold an evidentiary hearing on damages if the plaintiff submits sufficient evidence to support the request for damages. *See S.E.C. v. Smyth*, 420 F.3d 1225, 1232 n.13 (11thCir.2005). Here, the Receiver has submitted an affidavit and bank records demonstrating that defendant received \$35,000 in fraudulent transfers. *See* DE # 56, Ex. A. The court finds this evidence sufficient to establish damages and will award the amount requested by the Receiver.

Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. Plaintiff’s motion for default judgment against defendant Smart Investment Management Services, LLC [DE # 56] is **GRANTED**.
2. The Clerk of the Court is directed to enter this case as **CLOSED** and **DENY** any pending motions **AS MOOT**.
3. The court will enter final judgment by separate order. *See* Fed. R. Civ. P. 58(a).

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DONE and **SIGNED** in Chambers at West Palm Beach, Florida, this ^{Ta} 10 day of August, 2010.


Daniel T. K. Hurley
United States District Judge

Copies provided to counsel of record