UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
ERNEST BOYER, JR.,	)	CASE NO. 11-31568 HCD
	)	CHAPTER 7
	)	
DEBTOR.	)	
	)	
	)	
UNITED STATES TRUSTEE,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 11-3043
	)	
DENNIS MILLER, RICHARD KUHNS, and VANGUARD PROPERTIES LLC,	)	
	)	
DEFENDANTS.	)	

MEMORANDUM OF DECISION

At South Bend, Indiana, on October 6, 2011.

Before the court is the Motion for Default Judgment filed by the plaintiff United States Trustee, by counsel, against two individuals and a corporation: Dennis Miller, Richard Kuhns, and Vanguard Properties LLC. The plaintiff commenced this adversary proceeding with a Complaint to Determine Violations of 11 U.S.C. § 110 and/or Abuse of the Bankruptcy Process. *See* R. 1. She duly served the summons and a copy of the Complaint upon the defendants by first class mail. The court finds that service was effective upon the two individual defendants. *See* Fed. R. Bankr. P. 7004(b)(1). However, proper service upon a corporation, domestic or foreign, is governed by Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure. The court finds that service upon the defendant Vanguard Properties LLC was not duly made. For that reason, the Clerk's Entry of Default against Vanguard Properties LLC must be set aside.

The two individual defendants, Miller and Kuhns, failed to respond properly within the 30-day period required by the summons.[1] Once the plaintiff filed a Motion for Entry of Default, with an appropriate affidavit filed by counsel for the plaintiff, the court determined that the requirements of Rule 55(a) were met, and the Clerk's Entry of Default was issued.[2] *See* R. 17 (default against Kuhns); R. 18 (default against Miller); *see also* Fed. R. Bankr. P. 7055; Fed. R. Civ. P. 55(a). Although the Clerk's Entry of Default against Vanguard must be vacated, the Entries of Default were properly issued against Miller and Kuhns.

The plaintiff then filed a Motion for Default Judgment and attached an Affidavit declaring, with factual support, that the defendants Miller and Kuhn are not infants or incompetent persons and are not in military service. *See* R. 25; *see also* Fed. R. Civ. P. 55(b). In the Motion, the plaintiff provided facts to demonstrate that her underlying allegations in the Complaint justify a request for injunctive relief, fines, damages, and sanctions pursuant to 11 U.S.C. §§ 105(a), 110, 301, 362, and 521. According to the detailed allegations of the Complaint, the defendants were bankruptcy petition preparers who violated § 110 by filing abusive bankruptcy cases in their operation of a foreclosure rescue scheme. The Complaint detailed their wrongful and unlawful conduct to demonstrate abuse of the bankruptcy process. The court finds that the Complaint's allegations were well pled and unchallenged; they thus were sufficient to entitle the plaintiff to the relief sought. *See Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 633 (Bankr. N.D. Ind. 2008)*; In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003).

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[1] Defendants Miller and Kuhns filed "Motions for Extension of Response to Summons." The court noted the lack of signature on the documents and granted time for the defendants to amend the documents. On September 7, 2011, however, due to their failure to amend by signing the motion, as required by Rule 9011(a), the court ordered the defendants' Motions to be stricken. *See* R. 12, 13.

[2] The Affidavit stated that plaintiff's attorney conducted a "face-to-face meeting with the Defendants on August 8, 2011." R. 14, Affid., at ¶ 7. The court understands that statement to indicate that she met with Miller and Kuhns. The court notes, however, that the Complaint alleges that defendant Miller is the registered agent of the defendant Vanguard Properties LLC. It appears, therefore, that Miller is both an individual defendant and a registered agent for the corporate defendant. Nevertheless, service upon Miller as an individual defendant does not suffice as proper service of process upon the corporation Vanguard.

The court determines, however, that it must conduct a hearing on damages, fines and sanctions. *See* Fed. R. Civ. P. 55(b)(2)(B). The plaintiff's Exhibit in Support of her default judgment motion contains a more detailed explanation of her calculations regarding the fines and damages requested. *See* R. 26. Nevertheless, the evidence underlying those calculations is not evidence in the court's record. *See S.E.C. v. Smyth*, 420 F.3d 1225, 1232 n. 13 (11th Cir. 2005) (stating that a hearing is not required when "all essential evidence is already of record"); *see also* 10 James Wm. Moore, *et al.*, *Moore's Federal Practice* § 55.32[2][c] (Matthew Bender ed. 2010) (describing hearing as one in which parties "submit affidavits and other materials from which the court can decide the issue") (cited in *Kauffman v. S & K Const. Co. Inc.*, 2011 WL 902470 at *4 (M.D. Pa. Mar. 15, 2011)). The court requires a hearing to review documentary or testamentary evidence which adequately supports the amounts claimed in damages, fines and sanctions.

The court concludes, therefore, that the plaintiff has followed the requirements necessary to claim relief under Federal Rule of Civil Procedure 55, made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7055. The court grants the Motion for Default Judgment in favor of the plaintiff United States Trustee and against the defendants Dennis Miller and Richard Kuhns. Because service against the corporation was ineffective pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3), however, the court denies the Motion for Default Judgment against Vanguard Properties LLC. The Clerk's Entry of Default against Vanguard is vacated. The plaintiff shall have 21 days to amend the Complaint and/or to obtain the issuance of a new summons. The court will set a hearing on the damages, fines, and sanctions by separate order.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT