

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
MARIA M. STANCATI,)	CASE NO. 12-34045 HCD
)	CHAPTER 7
DEBTOR.)	
)	
)	
STATE OF INDIANA on the relation of the)	
INDIANA DEPARTMENT OF WORKFORCE)	
DEVELOPMENT,)	
PLAINTIFF,)	
vs.)	PROC. NO. 13-3011
)	
MARIA M. STANCATI,)	
DEFENDANT.)	

Appearances:

Maricel Elaine Villacampa Skiles, Esq., counsel for plaintiff, Office of the Indiana Attorney General, 302 West Washington Street, IGCS Fifth Floor, Indianapolis, Indiana 46204; and

Maria M. Stancati, pro se, 20286 Jackson Road, Apartment 3, South Bend, Indiana 46614.

MEMORANDUM OF DECISION

At South Bend, Indiana, on December 2, 2013.

Before the court is the Motion for Default Judgment filed by the plaintiff, State of Indiana on the relation of the Indiana Department of Workforce Development (“plaintiff” or “IDWD”) against the defendant Maria M. Stancati, chapter 7 debtor (“defendant” or “Stancati”). The plaintiff commenced this adversary proceeding by filing a Complaint To Determine Dischargeability of Debt pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7). The defendant did not respond to the Complaint or to the Motion for Default Judgment. For the reasons stated below, the court grants the Motion for Default Judgment in part and denies it in part.¹

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

BACKGROUND

Maria M. Stancati filed a chapter 7 voluntary petition on November 30, 2012. On January 10, 2013, the chapter 7 Trustee filed her Report of No Distribution. The Order of Discharge was entered on April 1, 2013, and the case was closed on September 29, 2013.

IDWD timely filed an adversary proceeding against the debtor. The Complaint alleged that the defendant received unemployment compensation benefits to which she was not entitled. It sought to have that debt declared nondischargeable as a debt for money obtained by false pretenses, false representation, or actual fraud under § 523(a)(2)(A). It also sought civil penalties under § 523(a)(7). After allowances for adjustments, set-offs, and repayment, the Complaint asked for entry of a judgment in the total amounts of \$6,005.00 (in Count I) and \$3,112.50 (in Count II), and requested that the debt be declared nondischargeable under §§ 523(a)(2)(A) and (a)(7). The debtor did not answer the Complaint. In fact, she did not appear in this adversary proceeding.

The plaintiff has asked the court to recognize the defendant's default and to enter a judgment by default. *See* Fed. R. Bankr. P. 7055; Fed. R. Civ. P. 55(a), (b). A default judgment is "strong medicine," *Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751, 779 (7th Cir. 2013), and the court must assure itself that the defendant and her attorney of record received notice of the allegations against her and was given an opportunity to respond.

The court determined that the Complaint, timely filed, *see* Fed. R. Bankr. P. 4007(c), was duly served upon the defendant and her bankruptcy attorney of record. *See* Fed. R. Bankr. P. 7004(b)(9), (g). Service was effected by first class United States mail and by certified mail, and the certified mail return receipts were attached to the Certificate of Service, thereby verifying proper proof of service and notice. *See* R. 4. The defendant failed to appear or to file a response within thirty days of issuance of the summons and Complaint. *See* Fed. R. Bankr. P. 7012(a). Once the deadline had passed, the plaintiff sought entry of default. It complied with Rule 55(a) by establishing the defendant's default in its Motion and Affidavit in Support. *See* R. 5; *see also Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D.

Ind. 2008). The Clerk of the Court then entered the default against the defendant. *See* R. 6; *see also* *Lowe v. McGraw-Hill Cos., Inc.*, 361 F.3d 335, 339 (7th Cir. 2004) (noting Rule 55’s distinction between an “entry of default” and “judgment by default”).

The plaintiff then requested that the court enter a judgment by default, in accordance with Rule 55(b). *See* R. 8. Attached to the Motion for Default Judgment were two affidavits. The Affidavit of Indebtedness was the declaration of the plaintiff’s Collection Specialist that the defendant received benefits from IDWD in the amount of \$9,117.50 to which she was ineligible. The Affidavit for Default Judgment was the declaration of plaintiff’s counsel, verifying that the defendant was not an infant, an incompetent person, or one on active military duty, as confirmed by the Department of Defense Manpower Data Center. Also attached to the Motion were numerous documentary exhibits verifying and elucidating the plaintiff’s allegations in the Complaint and Motion: IDWD Investigation Case Histories, Determinations of Eligibility, Notices of Potential Overpayment, and weekly claims vouchers.

In the Motion for Default Judgment itself, the plaintiff presented its § 523(a)(2)(A) claim by setting forth its undisputed facts, gleaned from the attached documents:

- (1) Stancati received weekly unemployment benefits by stating that she was unemployed;
- (2) Stancati certified that she was unemployed, available for work, and eligible to receive benefits;
- (3) Stancati answered the question “Did you work?” as “NO” on her weekly claims vouchers;
- (4) IDWD determined that Stancati was incarcerated from April 11 to June 27, 2009, and from July 11 to August 8, 2009; and
- (5) IDWD paid Stancati \$6,879.00 in benefits for the two periods she was incarcerated and claimed to be unemployed.

See R. 8, ¶¶ 7-10. When an investigator questioned her at an interview, the defendant stated that she authorized someone to help her file her claims while she was incarcerated because she needed the money. *Id.*, ¶ 12 (citing Exs. C, D). IDWD thereafter made a determination of ineligibility and sent Stancati notices of the overpayment of benefits to her. *See id.* Stancati did not appeal the determination.

The Motion for Default Judgment summarized its argument for nondischargeability of the debt Stancati owed to IDWD:

In summary, the Defendant, Maria M. Stancati, obtained unemployment benefits from the Department by certifying that he [*sic*] was unemployed and eligible to receive benefits. Stancati knew that her representations were false because she was incarcerated at the same time she was receiving unemployment benefits. Stancati deceived the Department, and the Department relied on Stancati's deceptions to its detriment, i.e., it erroneously paid unemployment benefits to Maria M. Stancati – benefits in [*sic*] which the Defendant was not entitled.

R. 8, ¶ 16. It asked the court for a judgment of nondischargeability in its favor by default. The defendant did not file any response to the Motion.

A bankruptcy court's entry of a judgment by default is discretionary. *See Sun v. Board of Trustees of Univ. of Ill.*, 473 F.3d 799, 810 (7th Cir.), *cert. denied*, 551 U.S. 1114, 127 S. Ct. 2941, 168 L.Ed.2d 262 (2007). It may be denied when the facts are insufficient to support the claim in the complaint. *See In re Mergen*, 473 B.R. 743, 744 (Bankr. W.D. Wis. 2012). Particularly in a bankruptcy setting, in which "a debtor has a presumptive right to a discharge, default motions should not be granted unless the movant demonstrates that its debt is nondischargeable as a matter of law." *In re Dade*, 2012 WL 1556510 at *4 (Bankr. C.D. Ill. May 1, 2012) (citations omitted); *see also In re Liebl*, 434 B.R. 529, 536 (Bankr. N.D. Ill. 2010); *In re Hostetter*, 320 B.R. 674, 678 (Bankr. N.D. Ind. 2005).

The court finds, first, that the plaintiff's request for a default judgment under Rule 55(b) included the required supporting affidavit that verified the defendant's status as not an infant, an incompetent person, or one holding military status. It presented the appropriate information that complied with the Servicemembers Civil Relief Act, 50 U.S.C. App., § 501 *et seq.* *See Pennsylvania Higher Educ. Assistance Agency v. Reinhart*, 2012 WL 3890245 at *3 (E.D. Tenn. Aug. 17, 2012) (citing cases). Before entering a default judgment, however, the court also requires that a plaintiff establish a *prima facie* showing on the merits of its claim. *See In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003). The plaintiff's Complaint asked the court to declare nondischargeable the defendant's debt to IDWD under § 523(a)(2)(A) as a debt for money obtained by false pretenses, false representation, or actual fraud.

Under § 523(a)(2)(A), a plaintiff must establish that (1) this defendant obtained the plaintiff's money through representations that the defendant either knew to be false or made with such reckless

disregard for the truth as to constitute willful misrepresentation; (2) the defendant acted with an intent to deceive the plaintiff; and (3) the plaintiff justifiably relied on the defendant's false representations to its detriment. *See, e.g., In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011); *Ojeda v. Goldberg*, 599 F.3d 712, 716-17 (7th Cir. 2010); *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994).

This court, having evaluated the plaintiff's default judgment motion, together with the attachments, finds that IDWD demonstrated that the defendant obtained the plaintiff's money by applying for and receiving unemployment benefits through false representations on the vouchers that she was not working and was available for work. However, during the compensable weeks of April 11 to June 27, 2009, and July 11 to August 8, 2009, Stancati in fact was incarcerated. *See* R. 8, ¶ 9. The plaintiff asserted that anyone who makes a false statement of material fact, knowing it to be false, and as a result receives benefits to which he or she is not entitled, is liable to repay that amount. *Id.*, ¶ 11 (citing Ind. Code § 22-4-13-1.1(b)). The court finds that the defendant made false statements of material fact on numerous weekly vouchers. Specifically, she (through a friend who acted on her behalf) answered "yes" to the questions "Did you look for full-time work?" and "Could you have worked . . . if work was offered to you?" Stancati, in jail, could not have looked for work or worked while incarcerated. Her false statements of material fact caused her to receive unemployment benefits to which she was not entitled. *See, e.g., Telligman v. Review Bd. of IDWD*, __N.E.2d __, 2013 WL 5799438 at *7 (Ind. App. Oct. 29, 2013) (affirming Board decision that defendant falsified facts to obtain unemployment benefits while employed). The court concludes that the defendant obtained benefits during the two compensable periods, in the amounts of \$4,804.00 and \$2,075.00, from the plaintiff through representations that the defendant knew to be false.

The court also finds that the plaintiff paid the defendant unemployment benefits in reliance on the defendant's false representations that she was unemployed. *See, e.g., In re Yuppa*, 2013 WL 4854479 at *4 (Bankr. S.D. Ohio, June 12, 2013) (finding that state agency justifiably relied on defendant's misrepresentations on benefits applications and certifications); *In re O'Brien*, 110 B.R. 27, 32-33 (Bankr. D. Colo. 1990) (finding that state agency, by ensuring that there was a basis for relying on debtor's

representation, reasonably relied). The court thus determines that IDWD met its burden of showing the first and third factors of the *prima facie* test of § 523(a)(2)(A), false representation and justifiable reliance.

However, the plaintiff's showing concerning the second essential element, the defendant's intent to deceive the plaintiff, was problematic. The plaintiff made no allegation of the defendant's intent to deceive in its Complaint, and in its Motion for Default Judgment it merely stated conclusorily that "Stancati deceived the Department." R. 11, ¶ 16. In addition, the investigator of Stancati's claim conducted the interview to determine whether she "failed to disclose or misrepresented material facts," but he made no inquiry into Stancati's intent. *See id.*, Exs. C, D. In fact, the Indiana unemployment compensation statute upon which the plaintiff relied, Indiana Code § 22-4-13-1(c), contains no requirement that an intent to deceive be found. It states:

(c) Any individual who knowingly:

(1) makes, or causes to be made by another, a false statement or representation of a material fact knowing it to be false; or

(2) fails, or causes another to fail, to disclose a material fact; and

as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount, with interest at the rate of one-half percent (0.5%) per month, to the department

Ind. Code § 22-4-13-1(c). The statute requires a finding of a knowingly false representation or omission of a material fact, but it lacks any language requiring examination of the claimant's intent to deceive. The court concludes that the element of intent to deceive is not essential to a recovery under Indiana Code § 22-4-13-1(c) but is required under § 523(a)(2)(A) of the Bankruptcy Code. It further determines that, in this case, fraudulent intent was not determined by the plaintiff's investigator or argued sufficiently by the plaintiff.²

² Compare *In re Chen*, 227 B.R. 614 (D.N.J. 1998) (affirming bankruptcy court's decision that state statute required knowing misrepresentation, not intent to deceive, and that defendant did not have the intent to deceive required for § 523(a)(2)(A)).

Nevertheless, the plaintiff presented a document which demonstrated the defendant's intent to deceive. The defendant had appeared at an interview with the claims investigator and had stated that she had authorized someone to help her file her claims while she was incarcerated because she needed the money. *See* R. 11, ¶ 12; Exs. C, D. The defendant thus admitted that she directed someone to file on her behalf while she was in jail; admitted that she needed the money; and admitted that there were numerous knowingly false statements on the weekly vouchers. *See In re Yuppa*, 2013 WL 4854479 at *4 (“Repeated misrepresentations of employment status when applying for unemployment benefits are sufficient to prove fraudulent intent.”) (citing cases). The court has no difficulty finding that those admissions provide conclusive circumstantial evidence that Stancati intended to deceive IDWD in order to obtain unemployment benefits from IDWD.

Based upon the defendant's own statement to the investigator and the unrebutted facts in the plaintiff's Motion for Default Judgment and appended documents, the court determines that the plaintiff has succeeded in demonstrating the second essential component to a determination of nondischargeability under § 523(a)(2)(A), the defendant's intent to deceive the plaintiff. Consequently, the court concludes that the plaintiff has established a *prima facie* showing of each of the required elements of nondischargeability of a debt under § 523(a)(2)(A).

The plaintiff also sought nondischargeability of the additional penalty debt “to the extent such debt is for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit” under § 523(a)(7). The IDWD asserted that the defendant incurred penalties of \$1,201.00 and \$1,037.50 for the compensable weeks she was incarcerated. To succeed under § 523(a)(7), the plaintiff must show that the debt reflects (a) a fine, penalty, or forfeiture; (b) payable to and for the benefit of a governmental unit; and (c) that is not compensation for actual pecuniary loss. *See Matter of Towers*, 162 F.3d 952, 954-55 (7th Cir. 1998), *cert. denied*, 527 U.S. 1004 (1999) (finding that civil restitution under Illinois's consumer fraud act is not payable for the benefit of the state's attorney general, and thus is dischargeable); *In re Reimann*, 436 B.R. 564, 568 (Bankr. E.D. Wis. 2010) (finding restitution nondischargeable under § 523(a)(7)). The

plaintiff recited the statute and then claimed entitlement to penalties without proving any of the required elements of the statute. It therefore has failed to prove the nondischargeability of the penalties added to the repayments.

Accordingly, the court finds that the plaintiff has complied with the procedural requirements of Federal Rule of Bankruptcy Procedure 7055 and Federal Rule of Civil Procedure 55(a) and (b). Concluding that a judgment by default is proper, the court grants the plaintiff's Motion for Default Judgment against the defendant in part and denies it in part. It grants the relief sought in the Complaint pursuant to § 523(a)(2)(A) but denies it pursuant to § 523(a)(7). Judgment of nondischargeability is entered against the defendant in the amount of \$6,879.00 but is not allowed for the additional penalty amounts.

CONCLUSION

For the reasons presented in this Memorandum of Decision, the Motion for Default Judgment filed by the plaintiff, State of Indiana on the relation of the Indiana Department of Workforce Development, against the defendant Maria M. Stancati, is granted in part and denied in part. The relief requested in the plaintiff's Complaint pursuant to 11 U.S.C. § 523(a)(2)(A) is granted. The relief requested pursuant to 11 U.S.C. § 523(a)(7) is denied. The obligation owed by the defendant to the plaintiff under § 523(a)(2)(A), in the amount of \$6,879.00, is excepted from the defendant-debtor's discharge.

SO ORDERED.

/s/ HARRY C. DEES, JR.

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