

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE:)	
)	CASE NO. 13-10085
WILLIAM ROWLAND HERMAN)	REG/JD
JUDITH IRENE HERMAN)	
Debtors)	ADV. PROC. NO. 14-1001
)	
)	
DEBRA L. MILLER, Trustee)	
)	
Plaintiff)	
)	
vs.)	
)	
RANDALL BRIAN STILES)	
)	
Defendant)	

**DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

The plaintiff in this adversary proceeding is the trustee in the debtors' underlying chapter 13 bankruptcy case. The defendant served as debtors' counsel. The complaint tells a very disturbing tale. In essence, the trustee alleges that Mr. Stiles misappropriated \$4,394.73 which the debtors had entrusted to him to deliver to the chapter 13 trustee in order to complete their payments under the confirmed plan. It also alleges that he instructed them to pay him \$1,719.19, as attorney fees in connection with this case, and, although they did so, these additional fees were never disclosed as required. See e.g., Fed. R. Bankr. P. Rule 2016(b). By this adversary proceeding, she seeks to recover those payments under a variety of theories.

Although properly served with the summons and complaint, the defendant has not filed an answer or appeared in this proceeding. As a result, the trustee has recently filed a motion for default judgement, and it is that motion which is presently before the court.

A defendant's failure to respond to the complaint against it does not automatically mean that the plaintiff is entitled to recover everything it has asked for. Instead, the court is obligated to review the complaint's factual allegations and satisfy itself that they state an appropriate claim for relief. See, Bixler v. Foster, 596 F.3d 751, 762 (10th Cir. 2010); Nishimatsu Constr. Co. Ltd. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975); Kemper Independence Insurance Co. v. Mendoza, 2012 WL 2680807 (N.D. Ind. 2012); Weft, Inc. v. G.C. Inv. Associates, 630 F. Supp. 1138, 1141 (E.D. N.C. 1986), *aff'd sub nom* Weft, Inc. v. Georgaide, 822 F.2d 56 (4th Cir. 1987). See also, Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming trial court's denial of motion for default judgment and sua sponte dismissal due to the complaint's failure to state a claim for relief); 10A Fed. Prac. & Proc. Civ. § 2688 (3rd ed.). Furthermore, "a default judgment must not differ in kind from, or exceed in amount, that which is demanded in the pleadings." Fed. R. Civ. P. Rule 54(c).

In this instance, the court is satisfied that the complaint more than sufficiently alleges that the defendant has misappropriated funds, and received unauthorized and undisclosed payments from the debtors, which may properly be recovered from him. The court's problem is that the plaintiff's motion appears to seek relief that is different from, and beyond, the relief sought by the complaint.

The complaint asks the court to:

1. Conclude that Mr. Stiles violated the automatic stay and require him to immediately turn the improperly obtained funds over to the trustee, and, should he fail to do so, authorize the trustee to set that amount off against any distributions he might be entitled to receive in other cases.
2. Deny Mr. Stiles all compensation in relation to his representation of the debtors in this case.
3. Pursuant to §526(c)(5), initiate its own inquiry into whether the defendant violated

the restrictions on debt relief agencies because the trustee does not believe she has standing to enforce those requirements. See, 11 U.S.C. § 526.

4. Require Mr. Stiles to provide the Indiana Supreme Court Disciplinary Commission with a copy of all orders entered in this adversary proceeding within 24 hours of issuance.

Plaintiff's motion for default judgment seeks all of this and more. In addition to recovering the amounts he improperly obtained from the debtors and denying him all compensation in the case, the trustee has also asked the court to order Mr. Stiles to disgorge the compensation he has heretofore properly received and to recover more than \$4,400.00 in attorney fees and expenses associated with this action. That relief was never sought in the original complaint and the plaintiff's motion has not identified any statute or rule which allow her to recover attorney fees. As a result the court should not award it.

As for the request concerning disciplinary proceedings, the original complaint asked the court to require Mr. Stiles to report himself to the Indiana Supreme Court Disciplinary Commission. The motion for default judgment asks the court to do so and to recommend that the Commission take disciplinary action. The court concludes that it is neither necessary nor appropriate to do so. To begin with the Indiana Supreme Court has recently suspended Mr. Stiles from practice in the State of Indiana, Matter of Stiles, Cause No. 02S00-1310-DI-686 (Ind. Feb. 3, 2014); Matter of Stiles, Cause No. 02S00-1310-DI-691 (Ind. Feb. 3, 2014), and so an additional referral would seemingly serve little purpose. More importantly, the plaintiff is fully capable of making such a referral on her own, and is the one in possession of the information the Commission would seek in connection with any inquiry. There is no reason to enlist the aid of the court to do something a plaintiff is fully and legally capable of doing on its own.

As for the request that the court, through § 526(c)(5), initiate an inquiry as to whether the defendant has violated the requirements of § 526, it will not do so. The court should generally be reluctant to become both prosecutor and adjudicator. While it may certainly do so, see, e.g. 11 U.S.C. § 526(c)(5); 105(a); Fed. R. Bankr. P. Rule 9011(c)(1)(B), the court usually acts in that dual capacity to protect itself and the integrity of the judicial process or where there is no other entity in a position to take effective action. While trustee may be correct in her statement that she lacks standing to enforce the provisions of § 526, the United States Trustee clearly has the necessary standing. 11 U.S.C. § 526(c)(5). If it is not inclined to look into the matter, the court sees little reason for it to undertake its own investigation. Furthermore, given his recent suspension from the practice, there seems to be little danger that Mr Stiles might violate those restrictions in the future. To the extent he may have done so in this case, the trustee has not identified any relief the court might award that has not been subsumed in the recovery that the trustee will otherwise be receiving.

IT IS THEREFORE ORDERED that:

1. Plaintiff, Debra Miller, trustee, have and recover from the Defendant, Randall Brian Stiles the sum of \$6,113.92, representing the amounts he improperly obtained from the debtors to complete their payments to the Chapter 13 trustee (\$4,394.73) and the unauthorized, undisclosed attorney fees he received from his clients (\$1,719.19), together with costs of this action.
2. Should the defendant fail to pay the trustee within fourteen (14) days of this date, see, Fed. R. Civ. P. Rule 62(a), the trustee is authorized to set the amount due off against any future disbursements Mr. Stiles might be entitled to receive from the trustee in any other case. This opportunity to set off is in addition to any other proceedings the plaintiff might wish to undertake in order to enforce the judgment.
3. Mr. Stiles is DENIED all compensation on account of this case. The court will, upon appropriate motion in the main case, entertain a request from the trustee to vacate any orders which might have been entered awarding Mr. Stiles compensation and to disgorge the amounts he may have been paid.

In all other respects, Plaintiff's motion for default judgement is DENIED. Judgement will be entered accordingly.

SO ORDERED.

Dated: March 31, 2014.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court