

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BOARD OF TRUSTEES OF THE	:	CIVIL ACTION
LABORERS' DISTRICT COUNCIL	:	NO. 04-2295
CONSTRUCTION INDUSTRY PENSION	:	
FUND, ET AL.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
ABC aka ACCURATE BUILDING	:	
CONTRACTORS and LUTHER	:	
JOHNSON	:	
	:	
Defendants.	:	

ORDER - MEMORANDUM

AND NOW, this **3rd day** of **November 2004**, it is hereby **ORDERED** that upon consideration of Plaintiffs' Motion for Default Judgment (doc. no. 6), the motion is **GRANTED** for the following reasons.

Plaintiffs are entitled to judgment by default against Defendants because Defendants have failed to respond to Plaintiffs' Complaint, and Plaintiffs will be prejudiced if the present motion is denied. Federal Rule of Civil Procedure 55(b) is the relevant legal authority concerning default judgments. Rule 55(b) provides:

Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant

has been defaulted for failure to appear and is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

Fed. R. Civ. P. 55(b).

In support of their Request for Entry of Default, Plaintiffs submitted an affidavit executed by counsel in which counsel "deposes and says" that:

1. The Summons and Complaint in this action were served on June 1, 2004 on Al Idokogi at Defendants' address who delivered the Complaint to Defendants. The Returns of Service were sent to be filed with this Court on July 15, 2004.
2. The time within which Defendants may answer or

otherwise move as to the Complaint has expired.

3. The time for Defendants to answer or otherwise move has not been extended and Defendants have not requested an extension or otherwise contacted Plaintiffs' attorney.

"Entry of a default judgment is left primarily to the discretion of the district court." Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3d Cir. 1984). "This discretion is not without limits, however, [as the Third Circuit has] repeatedly stated [its] preference that cases be disposed of on the merits whenever practicable." Id. at 1181. Three factors control whether a default judgment should be granted: (1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable or meritorious defense, and (3) whether defendant's delay is due to culpable conduct. Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000).

Here, with regard to the first factor, Plaintiffs will be prejudiced if default is denied because Plaintiffs continue to be denied the benefits of monetary income that would otherwise be realized if the contributions required under the agreements had been remitted by Defendants in a timely fashion. While "[d]elay in realizing satisfaction on a claim rarely serves to establish the [requisite] degree of prejudice," Feliciano v. Reliant Tooling Company, 691 F.2d 653, 656-57 (3d Cir. 1982), the prejudice to Plaintiffs in this case is more than just mere delay

in obtaining a judgment. Plaintiffs would be prejudiced for all of the reasons listed in Carpenters Health and Welfare Fund of Phila. and Vicinity v. Naqlak Design, No. 94-2829, 1995 U.S. Dist. LEXIS 566 (E.D. Pa. 1995), a case that involved facts similar to the facts in the instant matter. In Naqlak Design, Chief Judge Giles, Judge Giles at the time, held that:

[T]he Funds ability to meet its legal obligations is adversely impacted by [the defendant's] failure to make agreed upon contributions. The Funds are obligated to provide benefits for, and pension credits to, [the defendant's] employees so long as they are eligible to receive them. These benefits and credits must be provided regardless of whether [the defendant] makes its required contributions. . . . Additionally, the Funds allege that they have lost investment income and incurred higher administrative expenses because [the defendant] has not paid its contributions. These economic losses impair the Funds' ability to provide benefits to, not only [the defendant's] employees, but to employees of companies who have paid their contributions.

Id. at *8.

With regard to the second factor, it does not appear that Defendants have a litigable or meritorious defense. "The showing of a meritorious defense is accomplished when 'allegations of defendant's answer, if established on trial, would constitute a complete defense to the action.'" United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984). Because Defendants have not submitted an Answer or otherwise responded, it cannot be determined whether Defendants

have any defense, let alone a meritorious defense. See Naglak Design, 1995 U.S. Dist. LEXIS 566, at *7 (finding that because the defendant failed to file a responsive pleading the court was not in a position to determine whether the defendant has a meritorious defense).

Finally, with regard to the third factor, "the standard for 'culpable conduct' in this Circuit is the 'willfulness' or 'bad faith' of a non-responding defendant." Hritz v. Woma Corp., 732 F.2d 1178, 1182 (3d Cir. 1984). Here, it cannot be determined whether Defendants' failure to appear, plead, or otherwise defend the claims against them is due to culpable conduct because no Answer has been filed. Naglak Design, 1995 U.S. Dist. LEXIS 566, at *7 (finding that because the defendant failed to file a responsive pleading the court was not in a position to determine whether delay was the result of culpable conduct). It is, however, clear that Defendants have been served with the Complaint and therefore were put on notice as to their obligation to file a responsive pleading.

For the foregoing reasons, Plaintiffs' Motion for Default Judgment is granted.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.