

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

CHARLES SCHWAB & CO., INC. : CIVIL ACTION  
 :  
v. :  
 :  
DINESH MEHTA, a/k/a DENNIS MEHTA, :  
MERRILL LYNCH, PIERCE, FENNER & :  
SMITH, INC. and :  
PRUDENTIAL SECURITIES INC. : NO. 99-1555

MEMORANDUM AND ORDER

HUTTON, J.

June 15, 1999

Presently before the Court is Plaintiff Charles Schwab & Co., Inc.'s Motion for Default Judgment Against Defendant Dinesh Mehta, a/k/a Dennis Mehta (Docket No. 7). For the reasons stated below, the Plaintiff's Motion is **DENIED with leave to renew**.

**I. DISCUSSION**

Charles Schwab & Co., Inc. ("Schwab" or "Plaintiff") moves the Court to enter judgment by default in the amount of \$101,461.04, plus prejudgment interest, costs of suit and attorneys' fees against Dinesh Mehta, a/k/a Dennis Mehta ("Mehta" or "Defendant") for failure to enter an appearance or otherwise plead. The Plaintiff's motion is not only procedurally deficient, it cites to no authority and provides the Court with no basis for granting default judgment in its favor.

First, Plaintiff's motion does not comply with Federal Rule of Civil Procedure 55. Although the Plaintiff has attached an

affidavit with its motion that the Defendant is not an infant or incompetent person, Plaintiff failed to file this motion as a precipe to enter default with the Clerk's office. The proper format is for the Plaintiff to file a precipe with the Clerk to enter default and file a separate motion with the Court for default judgment. Fed. R. Civ. P. 55(a)-(b).

Second, the Clerk's Office can only enter judgment when an exact amount is stated in the wherefore part of the complaint. If no sum certain exists, then the Court, upon receipt of the motion for judgement, must hold a damage hearing. Fed. R. Civ. P. 55(b)(2).

Third, the court is required to exercise "sound judicial discretion" in deciding whether to enter default judgment. "This element of discretion makes it clear that the party making the request is not entitled to a default judgment as of right, even when the defendant is technically in default." 10 Wright, Miller & Kane, Federal Practice and Procedure § 2685. The court should consider a number of factors in determining whether to enter default and default judgment, including:

the amount of money potentially involved; whether material issues of fact or issues of substantial public importance are at issue; whether the default is largely technical; and whether plaintiff has been substantially prejudiced by the delay involved. Furthermore, the court may consider whether the default was caused by a good faith mistake or excusable neglect; how harsh an effect a default judgment might have; and whether the court thinks it later would be obliged to set aside the default on defendant's motion.

Franklin v. National Maritime Union of America, No.CIV.A.91-480, 1991 WL 131182, \*1 (D. N.J. Jul. 16, 1991), aff'd, 972 F.2d 1331 (3d Cir. 1992) (TABLE), cert. denied, 507 U.S. 926 (1993) (citing 10 Wright, Miller & Kane, Federal Practice and Procedure § 2685 (1983)). The Third Circuit has condensed those factors into a list of three: (1) prejudice to the plaintiff if default judgment is not granted; (2) whether the defendant has a meritorious defense; and (3) whether the defendant's delay was the result of culpable misconduct. Harad v. Aetna Cas. and Sur. Co., 839 F.2d 979, 982 (3d Cir. 1988). Plaintiff's motion fails to address any of these issues.

Fourth, and finally, Local Rule 7.1(c) provides in pertinent part that: "Every motion not certified as uncontested ... shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of their motion." E.D. Pa. R. Civ. P. 7.1(c). Plaintiff's motion is not accompanied by any brief and its motion cites to no authority. Thus, the Plaintiff's motion is denied with leave to renew.

An appropriate Order follows.

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

CHARLES SCHWAB & CO., INC. : CIVIL ACTION  
LOCAL 252, et al. :  
 :  
v. :  
 :  
 :  
DINESH MEHTA, a/k/a DENNIS MEHTA, :  
MERRILL LYNCH, PIERCE, FENNER & :  
SMITH, INC. and :  
PRUDENTIAL SECURITIES INC. : NO. 99-1555

O R D E R

AND NOW, this 15th day of June, 1999, upon consideration of Plaintiff Charles Schwab & Co., Inc.'s Motion for Default Judgment Against Defendant Dinesh Mehta, a/k/a Dennis Mehta (Docket No. 7), IT IS HEREBY ORDERED that the Plaintiff's Motion is **DENIED with leave to renew.**

IT IS FURTHER ORDERED that:

(1) the Plaintiff **SHALL FILE** its Motion for Entry of Default with the Clerk's Office within fifteen (15) days from the date of this Order; and

(2) the Plaintiff **SHALL FILE** its Motion for Default Judgment with this Court within twenty (20) days from the date of this Order.

BY THE COURT:

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HERBERT J. HUTTON, J.