UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL ELECTION COMMISSION,

Plaintiff,

vs. Case No. 3:10-cv-1155-J-37JRK

SAM KAZRAN a/k/a SAM KHAZRAWAN, et al.,

Defendants.
_____/

REPORT AND RECOMMENDATION[1]

This cause is before the Court on Plaintiff's Motion for Default Judgment Against Defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville ("HNJ") (Doc. No. 14; "Motion"), filed May 27, 2011.[2] In the Motion, the Federal Election Commission ("FEC" or "Plaintiff") is seeking a default judgment against HNJ because HNJ has failed to timely answer or file a responsive pleading. See Motion at 1. For the reasons stated below, the undersigned recommends the Motion be granted.

I. Background

On December 17, 2010, Plaintiff filed a Complaint (Doc. No. 1) alleging that HNJ is liable for illegal campaign contributions, in violation of the Federal Election Campaign Act, as amended, 2 U.S.C. §§ 431-455 ("FECA") (as implemented by 11 C.F.R. §§ 100.1 et seq.).

---

[1] Specific, written objections may be filed in accordance with 28 U.S.C. § 636 and Rule 6.02, Local Rules, United States District Court, Middle District of Florida ("Local Rule(s)"), within fourteen (14) days after service of this document. Failure to file a timely objection waives a party's right to a de novo review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; Local Rule 6.02(a).

[2] Plaintiff represents that a copy of the Motion was mailed to HNJ's registered agent on May 27, 2011. See Certificate of Service (Doc. No. 14-3).

Compl. at 1 ¶ 1. Specifically, Plaintiff alleges HNJ violated 2 U.S.C. § 441a by making contributions to a campaign for federal office in excess of the permissible amount, and Plaintiff alleges HNJ violated 2 U.S.C. § 441f by making contributions to a campaign for federal office in the names of other individuals. Id. at 1-2 ¶¶ 1-2. On February 16, 2011, service was effected on HNJ. See Affidavit of Service (Doc. No. 5), filed March 15, 2011. On April 8, 2011, the Clerk entered default as to HNJ. See Entry of Default (Doc. No. 8). On May 27, 2011, Plaintiff filed the Motion. Having not received a response to the Motion from HNJ within the prescribed time, on June 28, 2011, the undersigned provided HNJ additional time, until July 15, 2011, to respond to the Motion. See Order (Doc. No. 15) at 2. To date, HNJ has not responded to the Motion.

II. Standard of Review

Rule 55, Federal Rules of Civil Procedure ("Rule(s)"), provides the requirements for entry of a default judgment. See Fed. R. Civ. P. 55(b)(2). A default judgment may be entered "against a defendant who never appears or answers a complaint, for in such circumstances, the case never has been placed at issue." Solaroll Shade & Shutter Corp. v. Bio-Energy Sys., Inc., 803 F.2d 1130, 1134 (11th Cir. 1986). All well-pleaded allegations of fact are deemed admitted upon entry of default; however, before entering a default judgment, a court must confirm that it has jurisdiction over the claims and that the complaint adequately states a claim for which relief may be granted. See Nishimatsu Const. Co. v. Houston Nat. Bank, 515 F.2d 1200, 1206 (5th Cir. 1975);[3] see also GMAC Commercial

[3] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the United States Court of Appeals for the Eleventh Circuit adopted as binding precedent all the decisions (continued...)

Mortg. Corp. v. Maitland Hotel Assocs., 218 F. Supp. 2d 1355, 1359 (M.D. Fla. 2002) (stating "[a] default judgment cannot stand on a complaint that fails to state a claim") (citations omitted). Additionally, the court must decide whether an evidentiary hearing on the question of damages is necessary. "[A] judgment by default may not be entered without a hearing [on damages] unless the amount claimed is a liquidated sum or one capable of mathematic calculation." United Artists Corp. v. Freeman, 605 F.2d 854, 857 (5th Cir. 1979); see also SEC v. Smyth, 420 F.3d 1225, 1231 (11th Cir. 2005). When, however, the essential evidence regarding damages is before the court, a hearing on damages may not be necessary. See Smyth, 420 F.3d at 1232 n.13.

III. Facts

In the Complaint, Plaintiff alleges HNJ made contributions to Vern Buchanan for Congress ("VBFC") during the 2006 and 2008 election cycles "in excess of the applicable contribution limits for each election cycle," in violation of 2 U.S.C. § 441a(a). Compl. at 1-2 ¶ 2. Plaintiff further alleges HNJ used its own funds in the amount of $67,900 to make contributions in the names of other individuals to VBFC, in violation of 2 U.S.C. § 441f. Id. at 1 ¶ 1. For purposes of this Report and Recommendation, the undersigned accepts the factual allegations as to HNJ in the Complaint as true. See Nishimatsu Const. Co., 515 F.2d at 1206.

HNJ operated as a car dealership in Jacksonville, Florida at the time the events giving rise to this case occurred (2005-2007), and it was "organized as a partnership and registered

[3](...continued)
of the former United States Court of Appeals for the Fifth Circuit handed down prior to the close of business on September 30, 1981.

in Florida as a limited liability company." Id. at 4 ¶ 15. During the same time, Vern Buchanan held a majority stake in HNJ. Id. at 4 ¶ 16. In 2005, Mr. Buchanan commenced his campaign for the United States Congress, and VBFC was his principal campaign committee during the 2006 and 2008 election cycles. Id. at 4 ¶ 17. In 2005, eight contributions were made by individuals to VBFC in the amount of $2,100 each, and those individuals were reimbursed with HNJ's funds, totaling $16,800. Id. at 4 ¶ 18. In 2006, fifteen contributions in the amount of $2,100 each and one contribution in the amount of $1,200 were made by individuals to VBFC, and those individuals were reimbursed with HNJ's funds, totaling $32,700. Id. at 5 ¶ 19. In 2007, eight contributions were made by individuals to VBFC in the amount of $2,300 each, and those individuals were reimbursed with HNJ's funds, totaling $18,400. Id. at 5-6 ¶ 20. In total, $67,900 of HNJ's funds were used to reimburse individuals for contributions made to VBFC in the 2006 and 2008 election cycles. Id. at 6 ¶ 21. Mr. Buchanan sold the balance of his interest in HNJ at some point in 2008. Id. at 4 ¶ 16.

IV. Discussion

A. Applicable Statutes and Regulations

The alleged violations of FECA occurred during the election cycles of 2006 and 2008. During the election cycle of 2006, section 441a of FECA provided in relevant part that "no person shall make contributions . . . to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed [$2,100]." 2 U.S.C. § 441a(a)(1)(A); see Price Index Increases for Expenditure and Contribution Limitations, 70 Fed. Reg. 11,658, 11,659 (Mar. 9, 2005). During the 2008 election cycle, the contribution limit was raised to $2,300. See Price Index Increases for Expenditure and

Contribution Limitations, 70 Fed. Reg. 5,294, 5,295 (Feb. 5, 2007). Section 441f of FECA provides in pertinent part that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." 2 U.S.C. § 441f.

The term "person" as used in FECA includes "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." 2 U.S.C. § 431(11). The term also includes a limited liability company that elects to be treated as a partnership. See 11 C.F.R. § 110.1(g). FECA defines "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

B. Appropriateness of Judgment by Default

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 2 U.S.C. § 437g(a)(6).[4] Prior to initiating this action, Plaintiff pursued administrative remedies in accordance with 2 U.S.C. § 437g(a). See Compl. at 6-8 ¶¶ 22-29. On June 23, 2009, the FEC determined there was "reason to believe" that HNJ (1) violated 2 U.S.C. § 441a by making contributions to a campaign for federal office in excess of the permissible amount; and (2) violated 2 U.S.C. § 441f by making contributions to a campaign for federal office in the names of other individuals. Id. at 6 ¶ 22. On August 19, 2009, the FEC notified HNJ of

[4] Plaintiff attached the Declaration of Erin Chlopak to the Motion stating that HNJ is not a servicemember for the purpose of the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501 et seq. ("SCRA"). See Doc. No. 14-1. As Plaintiff recognizes, SCRA is not applicable to HNJ because HNJ is a limited liability company.

its findings and provided HNJ an opportunity "to submit any factual or legal materials that [HNJ] believed to be relevant" to the matter. Id. at 6 ¶ 23. On July 16, 2010, the FEC's Office of General Counsel notified HNJ that the General Counsel had considered the evidence related to the matter, and it was prepared to recommend a finding of "probable cause" to believe HNJ had violated 2 U.S.C. §§ 441a, 441f. Id. at 7 ¶ 24. In the July 16, 2010 notice, HNJ was invited to submit a brief in response to the General Counsel's brief. Id. HNJ did not respond. Id. at 7 ¶ 25. On September 21, 2010, the FEC made a "probable cause" finding with respect to HNJ's alleged actions. Id. at 7 ¶ 26. On September 28, 2010, the FEC's General Counsel sent HNJ a letter notifying it of the FEC's "probable cause" finding and enclosed a proposed conciliation agreement. Id. at 7-8 ¶ 27. Thereafter, the FEC attempted "to correct the violations by informal methods of conference, conciliation, and persuasion" to no avail. Id. at 7-8 ¶¶ 27-28. Having failed to reach "an acceptable conciliation agreement" with HNJ, the FEC commenced this action. Id. at 8 ¶ 28.

1. Civil Penalty

Upon review of the Complaint, the undersigned concludes Plaintiff adequately states a claim upon which relief can be granted under 2 U.S.C. § 441a because Plaintiff alleges (1) that HNJ contributed "$49,500 to VBFC during the 2006 election cycle, in violation of the $2,100 limit for contributions in connection with the 2006 primary and general elections," and (2) that HNJ contributed "$18,400 to VBFC during the 2008 election cycle, in violation of the $2,300 limit for contributions in connection with the 2008 primary and general elections." Compl. at 8-9 ¶¶ 34-35. Moreover, Plaintiff adequately states a claim upon which relief can be granted under 2 U.S.C. § 441f because Plaintiff alleges that HNJ used its own funds "to

make contributions to VBFC in the names of others." Id. at 9 ¶ 31.

The undersigned next addresses HNJ's liability. HNJ made contributions to VBFC in excess of the permissible amount during the election cycles of 2006 and 2008, in violation of 2 U.S.C. § 441a. See Compl. at 8-9 ¶¶ 33-35. Additionally, HNJ made contributions to VBFC in the names of individuals during the election cycles of 2006 and 2008, in violation of 2 U.S.C. § 441f. See id. at 8 ¶¶ 30-31. Plaintiff requests the Court impose a civil penalty against HNJ for its violations of FECA. Id. at 9-10. The undersigned finds a civil penalty against HNJ appropriate. At the time HNJ violated sections 441a and 441f, FECA provided for a civil penalty of up to the greater of either $6,500 or the amount of the contribution involved in the violation. See 2 U.S.C. § 437g(a)(6)(B); 11 C.F.R. § 111.24 (2006); Inflation Adjustments for Civil Monetary Penalties, 70 Fed. Reg. 34,633, 34,635 (June 15, 2005); Civil Monetary Penalties Inflation Adjustments, 74 Fed. Reg. 31,345, 31,346 (July 1, 2009).

Here, an evidentiary hearing as to damages is not necessary because the amount claimed by Plaintiff is capable of determination through mathematic calculation. See United Artists Corp., 605 F.2d at 857. Plaintiff sets forth two alternative methods for calculating damages. First, Plaintiff states that "calculating HNJ's civil penalty based on the maximum of $6,500 per violation, the penalty for HNJ's [thirty-two] contributions that violated section 441f would be up to $208,000, and the penalty for HNJ's [fourteen] contributions in excess of section 441a's contribution limits would be up to $91,000, for a maximum penalty of $229,000." Motion at 6. Second, Plaintiff states that "calculating the penalty based on the amount of the contributions involved in HNJ's violations of 441f, the maximum penalty would be $67,900, which is the sum of HNJ's illegal conduit contributions," and the penalty for

HNJ's violations of section 441a would be $59,100, resulting in a total penalty under the second alternative method of $127,000. Id. Plaintiff requests, however, that the Court only impose a total civil penalty of $67,900 for HNJ's violations of section 441f as provided for in the second statutory method because such a monetary penalty is "sufficient to punish HNJ, vindicate the public's and the [FEC]'s important statutory interests, and deter future violations by HNJ . . . ." Id. at 8.

Having found that HNJ (1) contributed $49,500 to VBFC during the 2006 election cycle, in violation of the $2,100 limit for contributions in connection with the 2006 primary and general elections; (2) contributed $18,400 to VBFC during the 2008 election cycle, in violation of the $2,300 limit for contributions in connection with the 2008 primary and general elections; and (3) used its own funds to make contributions to VBFC in the names of others during the 2006 and 2008 election cycles, the undersigned recommends, consistent with Plaintiff's request and for the reasons stated by Plaintiff, that a $67,900 civil penalty be imposed against HNJ.

2. Injunction

Plaintiff also requests the Court issue a permanent injunction as to HNJ to prevent it from repeating violations of FECA in the future. Compl. at 9; Motion at 8-9. Section 437g of FECA provides as follows:

> In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order . . . upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act . . . .

2 U.S.C. § 437g(a)(6)(B). "Because . . . [FECA] implicates First Amendment concerns about

political expression, it is important that courts avoid granting injunctive relief which is unnecessary to further the purposes of . . . [FECA]." F.E.C. v. Furgatch, 869 F.2d 1256, (9th Cir. 1989). A court "cannot issue an injunction unless there is a likelihood that [a defendant] will commit future violations and that likelihood is based on appropriate findings supported by the record." F.E.C. v. Odzer, No. 05 CV 3101 NG RML, 2006 WL 898049, at *5 (E.D.N.Y. Apr. 3, 2006) (unpublished) (quoting Furgatch, 869 F.2d at 1262-63).

Here, HNJ is liable for a number of violations of FECA during the course of two consecutive election cycles. Through its actions in the 2006 and 2008 election cycles, HNJ has demonstrated a repetitive history of violations of FECA. This weighs in favor of granting injunctive relief. See Odzer, 2006 WL 898049, at *5. Also, HNJ failed to participate in the administrative process prior to commencement of this case and failed to appear in this case to defend against the allegations. Indeed, HNJ has manifested its belief in the blamelessness of its conduct by failing to defend against the allegations or to account for its actions. See Furgatch, 869 F.2d at 1262 (stating that "[a] defendant's persistence in claiming that (and acting as if) his conduct is blameless is an important factor in deciding whether future violations are sufficiently likely to warrant an injunction") (citation omitted). This too weighs in favor of granting injunctive relief. Because the likelihood of future violations by HNJ is supported by the record, the undersigned recommends Plaintiff's request for a permanent injunction as to HNJ be granted. See Odzer, 2006 WL 898049, at *5.[5]

[5] The undersigned recognizes that weighing against granting injunctive relief is the fact that HNJ may not be currently operative and the fact that Vern Buchanan no longer holds an interest in HNJ. Nevertheless, on balance, the undersigned finds injunctive relief is appropriate in this instance.

V. Conclusion

Upon review of the Complaint, the Motion, and the file, it is

RECOMMENDED:

1. That Plaintiff's Motion for Default Judgment Against Defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville (Doc. No. 14) be **GRANTED**.

2. That Plaintiff be awarded $67,900 for Defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville's violations of 2 U.S.C. §§ 441a, 441f.

3. That Defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville be permanently enjoined from making contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed the permissible amount, in violation of 2 U.S.C. § 441a.

4. That Defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville be permanently enjoined from making a contribution in the name of another person or knowingly permitting its name to be used to effect such a contribution with respect to any election for Federal office, in violation of 2 U.S.C. § 441f.

5. That the Clerk be directed to enter judgment in favor of Plaintiff and against Defendant 11-2001 LLC d/b/a Hyundai of North Jacksonville in the amount of $67,900.

RESPECTFULLY RECOMMENDED at Jacksonville, Florida on August 29, 2011.

James R. Klindt

JAMES R. KLINDT
United States Magistrate Judge

wlg
Copies to:

Honorable Roy B. Dalton, Jr.,
United States District Judge

Counsel of Record
Pro se party

Joelle Fisher
Registered Agent for 11-2001 LLC
Law Office of Robert Eckard
3110 Alternate U.S. 19 North
Palm Harbor, Florida 34682