

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GE GROUP LIFE ASSURANCE :
COMPANY f/k/a PHOENIX MUTUAL :
INSURANCE COMPANY, :
 :
Plaintiff, :
 :
v. : No. 3:03CV1647 (DJS)
 :
DEANNE RUZYNSKI, :
 :
Defendant. :

RULING ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

This is an action by plaintiff GE Group Life Assurance Company f/k/a Phoenix Mutual Insurance Company to recover overpayments under a disability insurance plan to defendant Deanne Ruzynski pursuant to the Employee Retirement Income Security Act ("ERISA"). The action was filed on September 26, 2003, and a complaint and summons were served on defendant through the Secretary of the State of Connecticut on October 2, 2003 pursuant to Rule 4 of the Federal Rules of Civil Procedure and Section 52-59b(c) of the Connecticut General Statutes. (See Dkt. # 4). Defendant failed to appear or otherwise defend the action, thus default was entered against her on November 26, 2003, pursuant to Rule 55 of the Federal Rules of Civil Procedure. (See Dkt. # 5). Now pending before the Court is the plaintiff's motion for a default judgment (dkt. # 7). For the foregoing reasons, plaintiff's motion is **GRANTED**.

DISCUSSION

"It is well established that a party is not entitled to a default judgment as of right; rather the entry of a default judgment is entrusted to the sound judicial discretion of the court." Cablevision of S. Conn. Ltd. Partnership v. Smith, 141 F. Supp. 2d 277, 281 (D. Conn. 2001) (quoting Shah v. N.Y. State Dep't of Civil Serv., 168 F.3d 610, 615 (2d Cir. 1999)). In civil cases, however, "where a party fails to respond, after notice the court is ordinarily justified in entering a judgment against the defaulting party." Bermudez v. Reid, 733 F.2d 18, 21 (2d Cir. 1984). In this case, plaintiff is entitled to an entry of default judgment in light of defendant's failure to remit the funds incorrectly disbursed to her.

In deciding the extent of damages to be awarded in a default judgment, the court must consider several factors, including (1) the monetary award requested; (2) the prejudice suffered by the plaintiff; (3) whether or not the default is clearly established and (4) the nature of the plaintiff's claims against the defendant. Pinaud v. County of Suffolk, 52 F.3d 1139, 1152 n.11 (2d Cir. 1995) (citing 10 Moore's Federal Practice § 55.20[2][b]). The Second Circuit has provided some guidance in this matter, and has stated:

The outer bounds of recovery allowable are of course measured by the principle of proximate cause. The default judgment did not give [plaintiff] a blank check to recover from [defendant] any losses it had ever

suffered from whatever source. It could only recover those damages arising from the acts and injuries pleaded"

Greyhound Exhibit Group, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158-59 (2d Cir. 1992). In making this determination and evaluating the allegations asserted against the defendant, the court may "deem[] all the well-pleaded allegations in the pleadings to be admitted" by the defendant. Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 108 (2d Cir. 1997).

Based on plaintiff's allegations, which must be taken as admitted by defendant for the purposes of this default judgment, plaintiff requests a remittance of \$22,147.13 previously dispersed to defendant, costs in the amount of \$150.00, and a service charge of \$116.75. The proposed remittance is appropriate based upon the facts as pled and the affidavit submitted in support of the motion for a default judgment. (See Dkt. # 6). The proposed amount of costs is also reasonable.

CONCLUSION

For the foregoing reasons, the plaintiff's motion for default judgment (dkt. # 7) is **GRANTED**. Judgment shall enter in favor of GE Group Life Assurance Company f/k/a Phoenix Mutual Insurance Company in the total amount of \$22,147.13 for overpayments to defendant, for court costs in the amount of

\$150.00, and for the service charge of \$116.75, for a total of \$22,413.88. The Clerk of the Court is directed to close this case. Plaintiff's motion for entry of default (dkt. # 6) is **DENIED as moot.**

So ordered this 9th day of February, 2004.

/s/DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE