

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 2:15-cv-90-FtM-29CM

MARVIN DALE PALMER,

Defendant.

ORDER

This matter comes before the Court on plaintiff's Motion for Default Judgment Against Marvin Dale Palmer (Doc. #14) filed on February 19, 2016. No response has been filed and the time to respond has expired. The Court finds that an evidentiary hearing is not required and will render a decision based on the documents submitted.

On February 11, 2015, the United States filed a Complaint (Doc. #1) against Marvin Dale Palmer (Palmer) to collect outstanding civil penalties assessed against Palmer for failure to timely report his financial interest in a foreign bank account with the authorization of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury of the United States. Defendant was personally served with process, but Palmer failed to enter an appearance. The United States sought and obtained a Clerk's Default, and the Entry of Default (Doc. #13) issued on December 22, 2015. (Docs. ## 10-12.) Therefore, the United

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Defendant.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Order entered March 29, 2016, Plaintiff's Motion for Default Judgment against Marvin Dale Palmer (Doc. #14) is granted. Judgment is entered in favor of the United States against Marvin Dale Palmer assessing civil penalties in the amount of \$69,616.94, as of February 18, 2016, plus interest accruing at the applicable federal statutory rate of interest until paid for which sum let execution issue.

March 29, 2016

SHERYL L. LOESCH, CLERK

s/S. Upshaw, Deputy Clerk

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
 - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
 - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
 - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
 - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
 - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
 - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
 - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
 - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
 - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
 - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant.

4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

States has met the necessary prerequisite for a default judgment against Palmer. Fed. R. Civ. P. 55(a).

A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established. [] A default judgment is unassailable on the merits, but only so far as it is supported by well-pleaded allegations. [] A default defendant may, on appeal, challenge the sufficiency of the complaint, even if he may not challenge the sufficiency of the proof." Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1307 (11th Cir. 2009) (internal quotations and citations omitted).

Deeming the well pled facts in the Complaint (Doc. #1) as admitted: From 2003 through 2008, Palmer had a financial interest in and signatory authority over two accounts in Switzerland held in the name of trusts. From 2006 to 2008, the balances of both accounts were greater than \$10,000, and therefore Palmer was required to disclose his financial interest in the two accounts for each of these years. Palmer was required to file a Report of Foreign Bank and Financial Accounts (FBAR) pursuant to Title 31 of the Code of Federal Regulations Section 1010.306(c) to report his interest in the accounts on or before June 30 of each these years. Palmer did not do so, and in fact did not report income for either account for 2003 through 2008.

In 2009, Palmer requested admission into the Internal Revenue Service's Offshore Voluntary Disclosure Initiative, which allows the IRS to obtain amended income tax returns for the past unreported years. Palmer failed to provide bank records or tax returns and was removed from the program in May 2012 for his failure to cooperate with the Revenue Agent. On or about December 16, 2012, Palmer filed a delinquent FBAR for the two accounts for years 2003 through 2008.

A person who fails to report a financial interest in foreign accounts pursuant to 31 U.S.C. § 5314 and 31 C.F.R. § 1010.350 is liable to the government for a civil penalty not exceeding \$10,000. 31 U.S.C. § 5321(a)(5)(B). The United States seeks civil statutory penalties not exceeding \$10,000 per violation, plus interest for a total of \$69,616.94 as of February 18, 2016, and accruing until paid. In support of the request for a default judgment, the United States has filed two Declarations, one by the Revenue Agent who was assigned to assess delinquent taxes and penalties, and one by counsel verifying that Palmer is not currently on active duty status. Revenue Agent Kevin Gould declares that Palmer is not a minor or incompetent; that Palmer was assessed penalties on February 12, 2013, in the amount of \$10,000 per year, for a total of \$60,000; that despite proper notice and demand, Palmer failed to pay the penalties; and that

the total as of February 18, 2016, is \$69,616.94, including interest. (Doc. #14-1.)

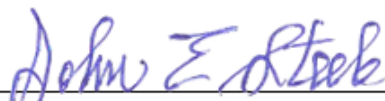
The attached Status Report Pursuant to Servicemembers Civil Relief Act (Doc. #14-2, Exh. 1) reflects no active duty in the military. The Court finds that the Complaint is sufficiently pled to support a default judgment, and that the default judgment is for a sum certain.

Accordingly, it is hereby

ORDERED:

1. Plaintiff's Motion for Default Judgment Against Marvin Dale Palmer (Doc. #14) is **GRANTED**.
2. The Clerk shall enter a default judgment in favor of the United States against Marvin Dale Palmer assessing civil penalties in the amount of \$69,616.94, as of February 18, 2016, plus interest accruing at the applicable federal statutory rate of interest until paid.
3. The Clerk is further directed to terminate all deadlines and to close the file.

DONE and ORDERED at Fort Myers, Florida, this 29th day of March, 2016.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies: Counsel of Record