

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA J. KOSTKA and
DARCY L. HERNANDEZ,

Defendants.

ORDER

11-cv-783-bbc

On November 21, 2011, the government initiated this case to obtain a judgment against defendant Joshua J. Kostka for federal income taxes, as well as foreclosure of federal tax liens against defendant Kostka's interest in real property that he owned in joint tenancy with defendant Darcy L. Hernandez. Defendants were served in February 2012; defendant Kostka returned his executed waiver of service on February 10, 2012; defendant Hernandez returned hers on March 9, 2012.

Although both defendant filed their waivers of service, neither filed any answer to the complaint or made any appearance. Accordingly, in late April, the government filed a motion for entry of default as to both defendants, noting that neither had filed an answer to the complaint and that neither was an infant or an incompetent. Neither defendant filed any objection to the motion and it was granted on May 7, 2012. The court scheduled a hearing on the judgment, to be held by telephone at the government's request on June 6,

2012, but the United States failed to file a motion for default judgment, so the hearing was continued until June 22, 2012. Immediately after the June 6, 2012 telephone call with the government had ended, defendant Hernandez telephoned the court to ask that she and codefendant Kostka be allowed to appear by telephone at the rescheduled hearing on the government's motion for default judgment. In an order entered on June 6, 2012, I advised defendants that they could not participate in any hearing unless they moved to set aside the May 7, 2012 order of default and showed good cause why the order should not stand.

Defendants responded by mailing a document to the court titled "Defendant's Motion Opposing Default," in which they said they had made good faith efforts to communicate with the government's counsel, that they had offered settlements that counsel had rejected and that they had been working to obtain legal counsel but had found it difficult because of their physical location. They also said that they believed that the status conference scheduled to April 17, 2012 would be their opportunity to be heard in the case. Although this document is not labeled a motion to set aside the default, I will consider it as one.

Unfortunately, the motion cannot be granted because defendants have not shown any reason why the default should be set aside. They say that they have not been able to hire counsel to represent them, but they do not explain why they could not have filed an answer to the government's complaint, even without counsel. Doing so would have alerted the court to their interest in the case and their willingness to defend it. More important, they do not deny that defendant Kostka owes the income taxes assessed against him, that he owns the

property the government is seeking to foreclose against or that the government has given defendants an opportunity to satisfy the tax lien. They do not suggest that they are prepared to satisfy the claim against defendant Kostka.

Although defendants have not shown any reason for setting aside the entry of default, I will allow them to participate in the telephone hearing on the motion for default judgment, to give them one last opportunity to explain why they believe that the government is not entitled to the default judgment it is seeking. If defendants choose to participate, they are to advise the court no later than noon on Thursday, June 21, 2012, of the telephone number or numbers at which they can be reached at 8:30 a.m., CDST, Friday, June 22, 2012. Counsel for the government is to call chambers at 8:30 a.m.; my secretary will connect defendants to the call.

Entered this 18th day of June, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge