

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v.

Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT BY CLERK AGAINST
DEFENDANT MICHAEL RUBEL PURSUANT TO FED. R. CIV. P. 55(b)(1)**

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD.; OASIS MANAGEMENT, LLC; AND SATELLITE HOLDINGS COMPANY ("***Plaintiff***"), pursuant to Fed. R. Civ. P. 55(b)(1) and Local Rule 1.07(b), moves the Clerk of Court to enter a default judgment in the amount of \$10,232.92 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$1,611.08 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Defendant, MICHAEL RUBEL ("***Rubel***"), and states as follows:

1. On April 15, 2019, Plaintiff was appointed by the Court presiding over *C.F.T.C. v. Oasis International Group, Ltd.*, Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) (the "***Receivership Case***"), as the Receiver and directed Plaintiff to take custody, control and possession of the Receivership Estate. *See* Wiand Affidavit attached hereto as **Exhibit "A."**

ENGLANDER FISCHER
ATTORNEYS

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2. In connection with Plaintiff's appointment in the Receivership Case, Plaintiff initiated this action and on April 14, 2020, Plaintiff filed his Complaint against Rubel (Doc. 1). (Exhibit A ¶ 3)

3. On June 30, 2020, Plaintiff served Rubel with the summons and complaint. See Affidavit of Service filed on July 16, 2020 (Doc. 203). (Exhibit A ¶ 4).

4. Rubel failed to serve or file a responsive pleading or otherwise defend this action. On July 27, 2020, Plaintiff moved for entry of a clerk's default. (Doc. 270). On July 28, 2020, the Clerk entered a default against Rubel. (Doc. 280). (Exhibit A ¶ 5).

5. Upon information and belief, Rubel is not an infant or an incompetent person or an active duty member of the U.S. Military. (Exhibit A ¶ 6).

6. As set forth in the Complaint, Plaintiff seeks recovery of a sum certain in the amount of \$10,232.92 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$1,611.08 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Rubel. *See* Compl. Ex. A at 78 (Doc. 1); (Exhibit A ¶ 7).

7. The prejudgment interest in the amount of \$1,611.08 is calculated as directed by the 11th Circuit Court of Appeals in *Wiand v. Dancing \$, LLC*, 578 Fed. Appx. 938 (11th Cir. 2014).

Legal Memorandum

Fed.R.Civ.P. 55(a) provides that, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Additionally, Rule 55(b)(1) provides that if the plaintiff's claim is for an amount certain or can be made by certain computation (on plaintiff's request and with an affidavit showing the amount due), the clerk must

enter judgment for that amount against a defaulted defendant. In this case, because Rubel failed to respond to the Complaint, Rubel is neither a minor nor an incompetent person, and Plaintiff has set forth the sum certain of \$10,232.92 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$1,611.08 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 with an affidavit showing same, the Clerk must enter a default judgment in the amount of \$10,232.92 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$1,611.08 and continuing thereafter at a per diem rate as a decimal of 0.0001647540. *See Wiand v. Dancing \$, LLC*, 578 Fed. Appx. 938 947 (11th Cir. 2014) (holding that the Receiver was entitled to recover prejudgment interest on FUFTA claim, "...in light of Florida's general rule that prejudgment interest is an element of pecuniary damages.")

WHEREFORE, Plaintiff moves for entry of a Default Judgment in the amount of \$10,232.92 plus prejudgment interest beginning from the date of each false profit distribution through July 31, 2020 in the amount of \$1,611.08 and continuing thereafter at a per diem rate as a decimal of 0.0001647540 against Rubel.

Respectfully submitted,

ENGLANDER FISCHER

/s/ Beatriz McConnell

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and served by U.S. mail and/or e-mail, as indicated, to the following: Michael Rubel, 60 Mallow Street, Staten Island, NY 10309.

Dated: August 20, 2020

/s/ Beatriz McConnell

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
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Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

**AFFIDAVIT OF PLAINTIFF BURTON W. WIAND IN SUPPORT
OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT
MICHAEL RUBEL**

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

BEFORE ME, the undersigned authority, appeared Burton W. Wiand, who, first being
duly sworn, deposes and says:

1. I am an attorney with Wiand Guerra King P.L. in Tampa, Florida. I make this
affidavit in support of the Plaintiff's Motion for Default Judgment Against MICHAEL RUBEL
("*Rubel*"). I make this affidavit based on information personally known to me or gathered by me
or by others at my request.

2. On April 15, 2019, I was appointed by the Court presiding over *C.F.T.C. v. Oasis
International Group, Ltd.*, Case No. 8:19-CV-886-T-33SPF (M.D. Fla.) (the "*Receivership
Case*"), as the Receiver and directed to take custody, control and possession of the Receivership
Estate.

Exhibit "A"
1

3. In connection with my appointment in the Receivership Case, I initiated this action and on April 14, 2020, I filed the Complaint against Defendant (Doc. 1).

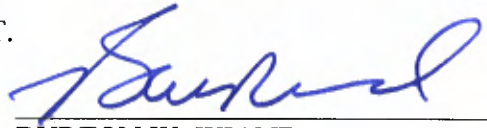
4. On June 30, 2020, I served Rubel with the summons and complaint. See Affidavit of Service filed on July 16, 2020 (Doc. 203).

5. Rubel failed to serve or file a responsive pleading or otherwise defend this action. On July 27, 2020, I moved for entry of a clerk's default. (Doc. 270). On July 28, 2020, the Clerk entered a default against Rubel. (Doc. 280).

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FURTHER AFFIANT SAYETH NAUGHT.



BURTON W. WIAND

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements in the state aforesaid and in the county aforesaid, BURTON W. WIAND personally appeared to me, who is personally known to me to be the person described herein and executed the foregoing and acknowledged before me that he executed the same.

SWORN TO AND SUBSCRIBED before the undersigned this 18th day of August, 2020. *AW*

 Andrea Wilson
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG909058
Expires 8/29/2023


NOTARY PUBLIC