

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No. CV 10-9462 DSF (SSx)

Date 6/15/11

Title Elvenia Bratton v. Ocwen Loan Servicing, et al.

Present: The
Honorable

DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order Setting Aside Defendant HSBC Bank USA N.A.’s Default and Order to Show Cause Why Action Should Not Be Dismissed for Lack of Prosecution

On May 12, 2011, the Court ordered Plaintiff to show cause why Defendant HSBC Bank USA N.A.’s default should not be set aside because it appeared Defendant was not properly served. (Docket No. 56.) The Court raised two separate concerns in the order to show cause. First, it appeared that Plaintiff may have attempted to effectuate service under Rule 5(b) instead of Rule 4(h) of the Federal Rules of Civil Procedure. (Id.) Second, it was not clear that the branch operations officer allegedly served was authorized to receive service on behalf of HSBC Bank. (Id.) Plaintiff’s response to the order to show cause does not substantively address either concern. For this reason, the Court sets aside HSBC Bank’s default.

Absent a showing of good cause, an action must be dismissed without prejudice if the summons and complaint are not served on a defendant within 120 days after the complaint is filed. Fed. R. Civ. Proc. 4(m). Generally, defendants must answer the complaint within 21 days after service. Fed. R. Civ. Proc. 12(a)(1).

In the present case, it appears that one or more of these time periods has not been met. Accordingly, the Court, on its own motion, orders plaintiff(s) to show cause in writing on or before **Monday, August 8, 2011**, why this action should not be dismissed as to the applicable defendant(s) for lack of prosecution. Pursuant to Rule 78 of the Federal Rules of Civil Procedure, the Court finds that this matter is appropriate for submission without oral argument. The Order to Show Cause will stand submitted on

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that date.

Filing of the following on or before the date indicated above will constitute a satisfactory response to the Order to Show Cause:

Proofs of service of summons and complaint on all defendants for whom such documents have not yet been filed.

IT IS SO ORDERED.