

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 2:18-cv-192-FtM-29CM

MARGARET A. HALVORSEN,

Defendant.

ORDER

This matter comes before the Court upon review of the Application and Declaration for Entry of Defendant's Default, construed as a Motion for a Clerk's Default, filed on April 24, 2018. Doc. 7. Plaintiff, the United States of America, seeks an entry of Clerk's default under Federal Rule of Civil Procedure 55(a) against Defendant Margaret A. Halvorsen for failure to defend. *Id.* For the reasons stated below, the Court will grant the relief requested.

Under Rule 55(a), "[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." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States v. Donald*, No. 3:09-cv-

147-J-32HTS, 2009 WL 1810357, at *1 (M.D. Fla. June 24, 2009).

An individual may be served by delivering a copy of the summons and complaint to the individual personally, or at the individual's usual place of abode with a co-resident who is at least 15 years old. Fed. R. Civ. P. 4(e)(2)(A)-(B); Fla. Stat. § 48.031(1)(a). Here, the Affidavit of Service states a process server from Investigative Process Service, Inc. served a true copy of the Summons, Complaint, and Civil Cover Sheet upon Peggy Burkert, a "co-resident" of Ms. Halvorsen, at 115 Rowland Road, Lehigh Acres, FL 33936.¹ See Doc. 6 at 2. The form indicates Ms. Burkert is over 15 years of age. See *id.* Service of process therefore was properly effected under Rule 4(e) and Fla. Stat. § 48.031(1)(a).

Under Rule 12(a)(1)(A), a defendant must serve an answer within 21 days after being served with the summons and complaint. Here, Defendant has failed to do so within the time period. Therefore, the entry of Clerk's Default pursuant to Rule 55(a) and Local Rule 1.07(b) is appropriate.

ACCORDINGLY, it is

ORDERED:

1. The Application and Declaration for Entry of Defendant's Default, construed as a Motion for Clerk's Default, (Doc. 7) is **GRANTED**.

2. The Clerk is directed to enter a Clerk's Default against Defendant Margaret A. Halvorsen.

¹ Ms. Halvorsen is the sole owner of 115 Rowland Road, Lehigh Acres, FL 33936, which is a single family residential property. See Lee County Property Appraiser, <http://leepa.org/> (last visited Apr. 24, 2018).

DONE and **ORDERED** in Fort Myers, Florida on this 25th day of April, 2018.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record