

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 12-22129-CIV-ROSENBAUM/SELTZER

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

JOSE S. RUBIO and RUBIO WEALTH
MANAGEMENT, LLC,

Defendants.

/

**ORDER STRIKING DEFENDANTS' EMAIL RESPONSE FROM RECORD; ORDER
REQUIRING DEFENDANT RUBIO TO PROPERLY COMPLY WITH COURT'S
ORDERS**

This cause is before the Court upon review of the record. Plaintiff filed its Complaint against Defendants Jose S. Rubio (“Rubio”) and Rubio Wealth Management, LLC, (“RWM”) on June 7, 2012. D.E. 1. After repeated unsuccessful attempts to serve Defendants with the Complaint and summons, Plaintiff sought and received from this Court permission to alternatively serve Defendants via email. D.E. 17. Defendants were served via email on August 22, 2012, and their Answer was due on or before September 12, 2012. D.E. 18. On Plaintiff’s motion, the Clerk entered a default against Defendants on September 14, 2012. Plaintiff then filed its Motion for Default Judgment on September 24, 2012. That same day, Defendant Rubio emailed this Court and Plaintiff stating his opposition to the motion.

In response to Rubio’s email, this Court ordered (1) Rubio to obtain counsel or properly file notice of his intent to appear *pro se*, (2) corporate Defendant RWM to obtain counsel, and (3) Defendants to show cause why Plaintiff’s Motion for Default Judgment should not be granted. D.E.

24; D.E. 25. The Court provided instructions to Rubio about the responsibilities of *pro se* litigants that specifically noted, among other things, that all papers must be filed directly with the Clerk of the Court, that nothing may be emailed directly to the district judge's chambers, and that all filings must include the litigant's address and telephone number. D.E. 24 at 3-5. Defendants were given until October 12, 2012, to comply with the Court's Orders, and were cautioned that failure to comply may result in the Court entering a default judgment against them.

In response to the Court's Orders, on October 12, 2012, Rubio improperly emailed this Court noting his intent to appear *pro se* and requesting that the case be dismissed. D.E. 26. Rubio's direct email to chambers is not a proper filing with this Court, as was explicitly made clear to Rubio in the Court's *pro se* instructions. Further, no counsel has entered an appearance on behalf of RWM at this time, and Rubio cannot represent RWM before this Court.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant Rubio's October 12, 2012, email [D.E. 26] is **STRICKEN** from the record because of its failure to comply with the Court's prior Order. It is further **ORDERED** that Rubio shall properly file with the Clerk of the Court his intent to appear *pro se* and his opposition to Plaintiff's Motion for a Default Judgment **no later than October 23, 2012**. Rubio's filings must comply with the Federal Rules of Civil Procedure and this Court's Local Rules. A failure to timely and properly file these documents with the Clerk of the Court may result in the granting of Plaintiff's Motion and the immediate entry of a default judgment against Rubio. The Court has now explained the proper filing procedures to Rubio twice. Further

failures to comply will be treated as failures to file.

DONE and ORDERED at Fort Lauderdale, Florida, this 16th day of October 2012.



ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

Copies furnished to:

The Honorable Barry S. Seltzer

Counsel of Record

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Rubio Wealth Management, LLC
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