

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

	:
LIFE INSURANCE COMPANY OF THE	:
SOUTHWEST	:
v.	: Civil Action No. DKC 18-0425
	:
HIEN LAC THANH, et al.	:

MEMORANDUM OPINION AND ORDER

Plaintiff, Life Insurance Company of the Southwest, filed a complaint on February 9, 2018, seeking to rescind a life insurance policy and accelerated benefits rider issued to Defendant, Hien Lac Thanh, and also to obtain "a declaration that both are null and void *ab initio*." (ECF No. 1). Plaintiff served the complaint upon Mr. Thanh through personal service on March 6, 2018. (ECF No. 4). Due to a lack of response by Mr. Thanh, the court ordered Plaintiff to file and serve by mail on Mr. Thanh a motion for entry of default by the clerk or provide a report as to why such motion would be inappropriate. (ECF No. 5). Plaintiff sought and was granted leave to file an amended complaint adding Vivienne Hong Granado, Power of Attorney for Defendant Hien Lac Thanh, as a defendant to this action. (ECF Nos. 6 & 8). Plaintiff filed an amended complaint on May 29, 2018, adding Ms. Granado as a defendant. (ECF No. 9). After difficulty serving Ms. Granado, Plaintiff sought and was granted leave to serve by alternative

service of process. (ECF Nos. 11 & 12). Plaintiff served Ms. Granado on June 29, 2018, by first class mail, postage pre-paid and on July 2, 2018, by posting a copy of the summons, the amended complaint, motion for leave to amend complaint and other papers at her residence. (ECF No. 13). To date, neither Mr. Thanh nor Ms. Granado has entered an appearance. Plaintiff moved for a clerk's entry of default for want of answer or other defense on July 26, 2018, and the clerk entered default on August 3, 2018. (ECF Nos. 14, 15). On August 8, 2018, Plaintiff filed a motion for default judgment against Mr. Thanh and possibly against Ms. Granado as well, although the motion is unclear. (ECF No. 16).

Federal Rule of Civil Procedure 55(b) provides for entering a default judgment. It provides in part:

- (1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.
- (2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented

by a general guardian, conservator, or other like fiduciary who has appeared.

The Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901, *et seq.*, also requires an affidavit of non-military service.

Plaintiff has not provided an affidavit attesting to Mr. Thanh's age or competence, or lack of military service. To the contrary, Plaintiff has indicated that the reason for adding Ms. Granado as a defendant as power of attorney for Mr. Thanh, was because, "[u]pon information and belief, Defendant Mr. [Thanh] may be an incompetent person for whom Defendant Ms. Granado is authorized to act on his behalf." (ECF Nos. 16, 16-9). If Mr. Thanh is an incompetent person, default judgment may only be entered against him if he is represented by a general guardian, conservator, or other like fiduciary who has appeared. Ms. Granado, as Power of Attorney for Defendant Hien Lac Thanh, has not appeared in this case. Further, Plaintiff cites no authority that an individual with power of attorney for a defendant is an "other like fiduciary" under Federal Rule of Civil Procedure 55(b)(2).

Accordingly, it is this 20th day of November, 2018, by the United States District Court for the District of Maryland, hereby ordered that:

1. Plaintiff's motion for default judgment (ECF No. 16) BE, and the same hereby IS, DENIED without prejudice to renewal; and

2. The clerk will transmit copies of this Order to the parties.

/s/
DEBORAH K. CHASANOW
United States District Judge