

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COMMISSION RECEIVABLES FUND 1,
LLC, a Nebraska Limited Liability
Company;

Plaintiff,

vs.

TOMMIE E. MCILWAIN, SR., SENIORS
CHOICE INSURANCE GROUP, Inc., an
Agency;

Defendants.

8:11CV131

ORDER AND JUDGMENT

THIS MATTER is before this court on the plaintiff's motion for default judgment against defendant Seniors Choice Insurance Group, Inc. ("Seniors Choice"). This is an action for breach of contract. The court has jurisdiction under [28 U.S.C. § 1332](#).

Defendant Seniors Choice Insurance Group, Inc. ("Seniors Choice") was afforded an opportunity to obtain substitute counsel or show cause why entry of default should not be filed. Filing No. 39. Seniors Choice failed to respond or obtain substitute counsel and the court ordered the Clerk of Court to enter default against it. Filing No. 47, Order; Filing No. 48, Clerk's entry of default. The action was referred to the bankruptcy court after a suggestion in bankruptcy was filed. Filing No. 55, Suggestion in Bankruptcy; Filing No. 56, Order. The bankruptcy court recommended that the court stay the action against defendant Tommie E. McIlwain, Sr., the debtor, under [11 U.S.C. § 362](#), but withdrew the reference of the proceeding against the nondebtor defendant, Seniors Choice. Filing No. 57, Report & Recommendation. Thereafter, the plaintiff reasserted its motion for default judgment.

The evidence offered in support of the motion for default judgment shows that on or about July 3, 2009, Seniors Choice executed a Commission Receivables Purchase Agreement ("2009 RPA") with Commission Receivables under the terms of which it agreed to sell and assign to Commission Receivables future renewal commissions on certain designated insurance policies. Filing No. 60, Index of Evid., Ex. 3, Supplemental Affidavit of Bryan Neary. Paragraph 2.2 of the 2009 RPA prohibited defendant from soliciting, marketing or causing any insured of the assigned policies to terminate, cancel, or lapse the policies or engage in any

activity whatsoever that could reasonably cause or encourage an insured to cancel, lapse or terminate the assigned policies. The plaintiff has shown that as a proximate result of Seniors Choice's breach of the 2009 RPA, Commission Receivables has been damaged in the amount of One Hundred Eighty-Five Thousand, Three Hundred Thirty-Two Dollars (\$185,332.00) in lost commissions through the life of the 2009 RPA. *Id.*, Neary Aff. at 3, Ex. A; see *also* Filing No. 51, Index of Evid., Ex. 2, Affidavit of Bryan Neary.

The record shows that notice of the motion for default judgment was delivered by mail to Tommie E. McIlwain, Sr., at 2300 Shady Pine Court, Gastonia, NC 28054, and to defendant Seniors Choice by mail to Tommie E. McIlwain, Sr., as an officer of Seniors Choice Insurance Group, Inc., at its principal place of business, 1716 E. Ozark Avenue, Gastonia, North Carolina 28054. See Filing No. 59, Notice of Electronic Filing; Motion at 3 (certificate of service). No response to the motion has been filed. Accordingly, the court finds the plaintiff is entitled to default judgment.

IT IS ORDERED:

1. Judgment is entered in favor of the plaintiff and against defendant Seniors Choice Insurance Group, Inc. in the amount of One Hundred Eighty-Five Thousand, Three Hundred Thirty-Two Dollars (\$185,332.00), together with interest at the legal rate accruing from this date.

2. The Clerk of Court is directed to shall mail a copy of this order to

Seniors Choice Insurance Group, Inc.
1716 E. Ozark Ave.
Gastonia, North Carolina 28054

Tommie E. McIlwain, Sr.
2300 Shady Pine Court
Gastonia, North Carolina 28054

DATED this 14th day of June, 2012.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge