



**IT IS ORDERED as set forth below:**

**Date: May 07, 2010**

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBERS</b>
	:	
CLIFTON WESLEY HODGES	:	BANKRUPTCY CASE
	:	NO. 08-10310-WHD
	:	
Debtor.	:	
_____	:	
	:	
DONALD F. WALTON,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 09-1112
v.	:	
	:	
CLIFTON WESLEY HODGES,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

This matter comes before the Court on the Motion to Set Aside Entry of Default filed by the Defendant, Clifton Wesley Hodges, in the above-captioned adversary proceeding.

The issues involved herein arise from a complaint filed by the Plaintiff, Donald F. Walton (hereinafter the "United States Trustee") to revoke the Defendant's Chapter 7 discharge. The Motion is not opposed. This matter is a core proceeding over which the Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(J); § 1334.

### **PROCEDURAL HISTORY**

The United States Trustee filed his complaint on December 11, 2009 and filed an amended complaint on the same day. The Defendant's answer was due on January 11, 2010. The Defendant failed to file an answer or otherwise respond to the Complaint. On April 7, 2010, the United States Trustee filed a request for entry of default, which the Clerk of Court entered on April 7, 2010. The Defendant filed the instant motion on April 16, 2010.

### **CONCLUSIONS OF LAW**

The grounds for setting aside a default are set forth in the Federal Rules of Civil Procedure, which specifically provide that “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” FED. R. CIV. P. 55(c) (made applicable to bankruptcy cases by FED. R. BANKR. P. 7055).

The Court notes that this Rule sets out two different standards to apply in two separate situations. The “good cause” standard applies to requests to set aside a default entered by the clerk of court, while the Rule 60(b) standard applies to motions to set aside an actual

judgment of default entered by a court. The distinction is important since the "good cause" standard is less stringent than the one found in Rule 60(b).

*Rogers v. Allied Media, Inc. (In re Rogers)*, 160 B.R. 249, 251-52 (Bankr. N.D. Ga. 1993) (Drake, J.) (citing *EEOC v. Mike Smith Pontiac GMC, Inc.*, 896 F.2d 524, 528 (11th Cir. 1990) (additional citations omitted).

As the Defendant's Motion is to set aside a default, as opposed to a default judgment, the Court will apply the less stringent "good cause" standard in order to decide whether to grant this request. Courts generally consider the following four factors to determine whether "good cause" exists to set aside an entry of default: (1) whether the defaulting party has acted promptly to vacate the default; (2) whether the defaulting party has presented a plausible excuse explaining the reasons for the default; (3) whether the defaulting party asserts a meritorious defense; and (4) whether the nondefaulting party will be prejudiced by setting aside the default. *Id.* at 252 (citing *Turner Broadcasting System, Inc. v. Sanyo Elec., Inc.*, 33 B.R. 996, 1001 (N.D. Ga.1983), *aff'd*, 742 F.2d 1465 (11th Cir.1984)) (additional citations omitted). In addition to considering these factors, the Court must also "keep in mind the strong policy consideration" that generally favors adjudicating cases on their merits, as opposed to granting judgments by default. *Id.*

Here, the Defendant moved quickly after having received notice of the entry of the default to request default be set aside. Although the Defendant did not provide any explanation as to why he failed to file his answer on time and failed to attach to the motion

a copy of the answer that the Defendant would file in the event the Court sets aside the default, the Defendant does allege that he did not engage in any fraud in obtaining his discharge. If proven at trial, this would constitute a meritorious defense. Further, as the United States Trustee does not oppose the Motion, the Court finds no basis to conclude that the United States Trustee would be prejudiced by the granting of the Motion. Finally, the Court is persuaded by the strong policy consideration in favor of adjudicating cases on the merits that it would be appropriate to grant the Motion.

#### **CONCLUSION**

For the reasons stated above, the Court finds that the Defendant has satisfied the "good cause" standard of Rule 55(c) required to set aside an entry of default. Accordingly, the Defendant's Motion to Set Aside Default is hereby **GRANTED**. The Defendant shall be permitted thirty (30) days from the date of the entry of this Order within which to file an answer to the United States Trustee's complaint.

**END OF DOCUMENT**