

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION, an agency of the State of South
Dakota,

Plaintiff,

vs.

LES SUMPTION and MATT SWEARINGEN
d/b/a S&S Communications and S&S
COMMUNICATIONS, a South Dakota general
partnership,

Defendants:

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CIV 05-236

**APPLICATION FOR
DEFAULT JUDGMENT;
MOTION TO DISMISS
REQUEST FOR
PREJUDGMENT INTEREST
AND DISBURSEMENTS**

Plaintiff, South Dakota Public Utilities Commission ("Plaintiff" or "Commission"), hereby makes application to the Court for entry of judgment by default in the above-entitled action pursuant to SDCL 15-6-55(b).

1. The Commission commenced this action on July 19, 2005. John W. Burke, attorney for Defendants, admitted service of the Summons and Complaint on July 29, 2005. Mr. Burke was authorized to admit service on Defendants' behalf.

2. The Notice and Admission of Service of Summons and Complaint by Mail stated in the last paragraph: "If you do complete and return this form, you or the above-named defendants must answer within thirty (30) days. If you fail to do so, judgment by default may be taken against your clients for the relief granted."

3. Defendants have filed neither an answer nor any other pleading in this case other than the Admission of Service of Summons and Complaint by Mail (see attached Affidavit).

4. The Commission levied the \$13,400 in civil fines that are the basis of this action after a two day adjudicatory hearing at which defendants appeared through counsel. The Commission provided detailed factual findings and conclusions of law in its decision levying the fines, which defendants did not appeal. This decision is attached to the Complaint. There is an ample factual and legal basis for the Court to enter judgment by default in this case. There are no facts known to the Commission to justify not entering a default judgment in this case.

5. Defendants have neither paid anything to the Commission in satisfaction of the \$13,400 in civil fines levied by the Commission nor given any indication to the Commission that they intend to pay the fines.

6. On December 6, 2005, the United States Bankruptcy Court for the District of South Dakota entered an Order Discharging Debtor(s) granting Matthew R. Swearingen a discharge of debts pursuant to 11 U.S.C. § 727. Matthew R. Swearingen is the same person as Defendant Matt Swearingen in this case. The civil fines for which the Commission seeks a judgment in this case are penal in nature and not compensatory and are therefore a nondischargeable debt pursuant to 11 U.S.C § 523(a)(7).

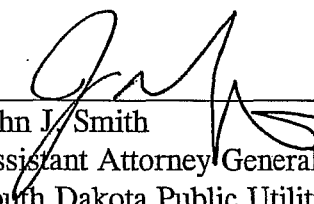
7. This Court has jurisdiction, concurrent with the United States District Court or Bankruptcy Court, to make a determination of nondischargeability pursuant to 11 U.S.C. § 523(a)(7). *In re Honeycutt*, 228 B.R. 428 (1998).

8. The Commission moves the Court to dismiss the Commission's request in its Complaint for pre-judgment interest and disbursements.

WHEREFORE, Plaintiff requests that the Court enter judgment by default against Defendants, jointly and severally, as follows:

1. For a monetary judgment in the amount of \$13,400.00 against Defendants jointly and severally.
2. For permission pursuant to SDCL 48-7A-307(4) to levy execution on the judgment against Les Sumption's and Matt Swearingen's personal assets.

Dated this 17th day of May, 2006.



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