

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. : 07-60534-CIV-DIMITROULEAS
MAGISTRATE JUDGE: ROSENBAUM

HOWARD K. STERN,

Plaintiff,

vs.

JOHN M. O'QUINN and
JOHN M. O'QUINN & ASSOCIATES PLLC
d/b/a The O'Quinn Law Firm

Defendants.

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' UNTIMELY ANSWER

NOW COMES Plaintiff Howard K. Stern and, pursuant to Federal Rule of Civil Procedure 12, hereby respectfully requests that the Court strike the untimely Answer of Defendants John M. O'Quinn ("O'Quinn") and John M. O'Quinn & Associates, PLLC d/b/a The O'Quinn Law Firm ("The O'Quinn Law Firm").

As set forth in Stern's application for default, which was entered by the Clerk of Court, Defendants' answers were due on or before August 22, 2008. Defendants filed their Answer on September 16, 2008, without the leave of Court required by Federal Rule of Civil Procedure 6(b), and only after the Clerk of Court made an entry of default on the docket as to Defendants. [Compare DE 176 with DE 178.] Defendants' Answer is therefore untimely and violates Federal Rule of Civil Procedure 6(b) because Defendants did not seek leave to file the Answer after the time set forth in Federal Rule of Civil Procedure 12 had expired.

For the foregoing reasons, the Court should GRANT this Motion and

- (i) strike the untimely Answer of Defendants O'Quinn and The O'Quinn Law Firm; and
- (ii) order that the facts alleged in Stern's Amended Complaint are found to be established.

In support of this motion, Stern relies on his supporting memorandum, filed simultaneously herewith.

A proposed order striking Defendants' untimely Answer is attached hereto as Exhibit A for the Court's convenience.

Dated: September 17, 2008.

/s/ L. Lin Wood

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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This 17th day of September, 2008.

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