

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

APPLICATION FOR ENTRY
OF DEFAULT

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543
Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

1. On November 22, 2002, a copy of the summons and complaint was served on David Palmer, the above named Defendant, and the certificate of service of process was filed in this Court on the same date.
2. Defendant, David Palmer, has failed to plead or otherwise defend in this action, and the time to plead or otherwise defend expired on December 16, 2002.

 Defendant has appeared in this action.
 Defendant has not appeared in the Adversary proceeding No. 02-2230, and the time to appear has expired.
3. The Defendant is not an infant or incompetent person.
4. Debtor is is NOT the Defendant. If debtor is Defendant, a default judgment motion was properly brought and served in accordance with Rule 55 and Fed.R.Bankr.P. Rule 7055.
5. It is requested that the Clerk enter default of the Defendant pursuant to Bankruptcy Rule 7055 and Rule 55(a) of the F.R.C.P.
6. I, Dr. Richard Cordero, third-party plaintiff appearing pro se, declare under penalty of perjury that the foregoing is true and correct.

Executed: December 26, 2002

Dr. Richard Cordero

CLERK'S CERTIFICATE OF DEFAULT

The default of the Defendant, David Palmer, is hereby entered according to law.

Dated: _____

PAUL R. WARREN, Clerk of Court

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

AFFIDAVIT OF
NON-MILITARY SERVICE

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

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Third-party Defendant

I, Dr. Richard Cordero, am Plaintiff pro se in the above action. When I spoke with Defendant Palmer early this year, he presented himself to me as a businessman and never mentioned that he was or intended to be in the military. After Mr. Palmer would not take or return any of my phone calls, I communicated with his attorney, Raymond Stilwell, Esq., in an effort to get Mr. Palmer to honor his word concerning the retrievability of my property, which his company, Premier Van Lines, Inc., the Debtor, held in storage for me. Mr. Stilwell invoked a confidentiality privilege and refused to provide any information concerning Mr. Palmer's whereabouts. Mr. Stilwell never alleged that Mr. Palmer's unavailability was due to his being in military service. The above stated address of Mr. Palmer appeared in the certificate of service that the attorneys at Underberg & Kessler for M&T Bank, the lienholder of Premier's assets, attached to a paper that they have just served in this action, in which M&T Bank is a defendant.

I learned from M&T Bank and its attorneys that M&T Bank obtained a judgment against Mr. Palmer that at the time it could not enforce because it had not been able to find Mr. Palmer.

Thus, I affirm that to the best of my knowledge it is my good faith belief that Defendant Palmer is not in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940.

Dated: December 26, 2002

Dr. Richard Cordero

(Affirmed under penalty of perjury)

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

**ORDER TO TRANSMIT RECORD
TO DISTRICT COURT**

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543
Raymond Stilwell, Esq.
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Third-party Defendant

**ORDER TO TRANSMIT RECORD IN NON-CORE PROCEEDING TO DISTRICT
COURT, COMBINED WITH FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION REGARDING PLAINTIFF'S REQUEST FOR ENTRY
OF DEFAULT JUDGMENT**

The Clerk of Bankruptcy Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984)

TO THE DISTRICT COURT:

Having examined the record in this Adversary Proceeding and having found it to be a non-core proceeding, the Bankruptcy Court is without authority to enter a final or dispositive order or judgment. (See, §157(c), Title 28 United States Code). Plaintiff has requested entry of default judgment against David Palmer, the above named Defendant.

No hearing was necessary.

A hearing was necessary, which hearing was held on _____

at _____, on notice to _____

at which hearing there appeared _____

_____, who was heard.

FINDINGS

This Court now finds that the Third-party Complaint was filed by the Plaintiff on November 22, 2002, that an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of judgment by default, by application or affidavit filed in this Court on December 26, 2002, and that the Clerk certified and entered the Fact of Default on _____.

CONCLUSIONS

The Plaintiff is entitled under applicable law to entry of judgment by default.

RECOMMENDATION

Wherefore, it is recommended that the District Court award default judgment to the Plaintiff in the amount of \$24,032.08 (plus the allowed per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Amount Due.

Date: _____

John C. Ninfo, II, U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

AFFIDAVIT OF AMOUNT DUE

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
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Rush, New York 14543
Raymond Stilwell, Esq.
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Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

In support of the Plaintiff's request that the Bankruptcy Court recommend and the District Court enter default judgment against David Palmer, the above named Defendant, the Plaintiff submits the following itemization of damages sought:

Principal amount prayed for:

1) property in storage	14,000.00
2) capitalized moving, storage, insurance and related fees and taxes that Plaintiff has paid since his property went into storage in August 1993.....	9,887.15
Pre-judgment interest at the rate of 5% from November 22 through December 26, 2002	44.93
Costs (for copying, phone, and postage).....	100.00
Attorney's fees (See § 1923, Title 28 United States Code).....	+0.00
TOTAL DAMAGES	\$24,032.08

Plus per diem of \$3.40 since the date of the filing plaintiff's request for default

Date: December 26, 2002

Dr. Richard Cordero

Plaintiff pro se

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

ORDER

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
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Raymond Stilwell, Esq.
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Third-party Defendant

Based on the annexed Recommendation and Certification, it is

ORDERED, ADJUDGED AND DECREED that a default judgment be entered against David Palmer, the above named Defendant, in the amount of \$24,032.08.

Date: _____

U.S. D. J.

Certificate of Service

I, Dr. Richard Cordero, served a copy of my letter to Judge Ninfo, a Pre-trial Option Form, and my application to enter a default judgment against Mr. David Palmer, all dated December 26, 2002, on the parties listed below.

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1400 United States Courthouse
100 State Street
Rochester, NY 14614

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883

Mr. David Dworkin
415 Park Avenue
Rochester, New York 14607

Jefferson Henrietta Associates
415 Park Avenue
Rochester, New York 14607

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

The President
Rochester Americans Hockey Club
Office of the President
100 Exchange Blvd.
Rochester, New York 14614

Dated: December 26, 2002
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
tel. (718) 827-9521