

I was sued in federal court and learned a default has been entered against me, what do I do?

7 February 2012

Technically, a defaulted party must address the default before anything else significant can be done with the case. A default is sort of like forfeiting a sports game for not showing up. In practical terms, you have either already lost the case, or you are in jeopardy of losing the case if you wait. There is not way of knowing until you try. So, the bottom line is that you need to move fast, and unless you understand federal procedure, hire an attorney.

It is uncertain if you can get back in the game, but for sure, you should not delay. Once you get an attorney on board, most likely, initially, the attorney will have to assess the situation and discern exactly what stage the case is in. There could be just a default entered, or it may be default judgment has entered. If it is just a default, which is what will be addressed in this blog, what an attorney will likely do is seek to have the default vacated. They will need to move the court pursuant to Fed. R. Civ. P. 55(c), which states:

For 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).

What the first phrase of the rule provides, and what is necessary to meet to remove a default is commonly referred to as, is the “good cause” standard. The burden of persuading the court to remove the default is on the person seeking to have the default set aside. Indigo America, Inc. v. Big Impressions, LLC, 597 F.3d 1, 3 (1st Cir. 2010). Good cause is a flexible standard, but the flexibility is “not so elastic as to be devoid of substance.” Coon v. Grenier, 867 F.2d 73, 76 (1st Cir. 1989). The factors that a court typically considers are: 1) whether the default was willful; 2) whether setting the default aside would prejudice the adversary; and 3) whether a meritorious defense is presented. Indigo America, Inc. v. Big Impressions, LLC, 597 F.3d at 3. Some other factors that could be considered are: 4) the nature of the defendant’s explanation of the default; 5) the good faith of the parties; 6) the amount of money involved; and 7) the timing of the motion to set aside the default. Id.

Before taking the above factors and running off to pursue the matter, further study is necessary. Each of these factors have important legal interpretations; they are each almost their own “legal phrase of art” if you will, that differ than an interpretation derived from a cursory review of the language. For instance, willfulness does not mean that you had some sort of evil intent. Another is that simply delay in the action does not constitute prejudice, but some other facts do. Also, some factors seem to receive more weight than others. All in all, significant effort must be put into this endeavor, which is best done by an experience litigator.

In the event you are facing a default, especially in federal court, please feel free to contact us to discuss what we can do for you.

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How to remove a default in federal court/how to set aside a default in federal court/how to handle a default judgment/what to do about a default in court