

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

 IN RE:)
)
 BARBARA ROTH,)
)
 DEBTOR.)

CASE NO. 00-32591(LMW)
 CHAPTER 7

 ROBERTA NAPOLITANO, TRUSTEE,)
)
 PLAINTIFF)

ADV. PRO. NO. 04-3126
 DOC. I.D. NO. 16

vs.

)
 BARBARA ROTH,)
)
 DEFENDANT.)

APPEARANCES

Roberta Napolitano, Esq.
 Weinstein, Weiner, Ignal, Napolitano
 & Shapiro, P.C.
 P. O. Box 9177
 Bridgeport, CT 06601

Plaintiff and Chapter 7 Trustee

Barbara Roth
 c/o Frances Beckham
 2000 Presidential Way
 Washington Towers
 Apartment 301
 West Palm Beach, FL 33401

Pro Se Defendant

and

Barbara Roth
 7800 Palencia Way
 Delray Beach, FL 33446

and

Barbara Roth
P. O. Box 123
Greens Farms, CT 06838

BRIEF MEMORANDUM AND ORDER
RE: MOTION FOR DEFAULT JUDGMENT

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, the chapter 7 trustee (the “Trustee”) commenced this adversary proceeding by complaint (Adv. Pro. Doc. I.D. No. 1, the “Complaint”)¹ on August 25, 2004;

WHEREAS, the Trustee filed a Motion for Default for failure to plead or defend on April 25, 2005. (*See* Adv. Pro. Doc. I.D. No. 13.);

WHEREAS, the Clerk’s Office entered default on April 27, 2005. (*See* Adv. Pro. Doc. I.D. No. 14);

WHEREAS, the Trustee filed a Motion for Default Judgment on June 29, 2005. (*See* Adv. Pro. Doc. I.D. No. 16, the “Motion”);

WHEREAS, a hearing (on notice to the Debtor, the “First Hearing”) was held on the Motion on July 20, 2005. (*See* Adv. Pro. Doc. I.D. Nos. 17 and 18.);

WHEREAS, the Trustee appeared at the First Hearing but the Debtor (who is *pro se* in the chapter 7 case and this adversary proceeding) did not appear. At the conclusion of the First Hearing, the court took the matter under advisement;

¹ References herein to the docket of this adversary proceeding appear in the following form: “Adv. Pro. Doc. I.D. No. ____.” References herein to the docket of this chapter 7 case (or the superceded chapter 11 case) appear in the following form: “Case Doc. I.D. No. ____.” References herein to the docket of Case No. 94-51677 for this district appear in the following form: “Prior Case Doc. I.D. No. ____.”

WHEREAS, the court was concerned that service may have been insufficient and on August 17, 2005, issued an order (Adv. Pro. Doc. I.D. No. 20, the “Re-service Order”) scheduling a new hearing on the Motion² and requiring the Trustee to re-serve a copy of the Motion and Re-service Order on the Debtor at three addresses³ on or before August 24, 2005.

WHEREAS, on August 23, 2005, the Trustee filed a certification (Adv. Pro. Doc. I.D. No. 22) with the court representing that the Trustee had served the Debtor at the three addresses listed in the Re-servicing Order.

WHEREAS, a Second Hearing was held on the Motion on November 2, 2005.⁴ The Trustee appeared at the Second Hearing and represented to the court that the notice sent to the Greens Farms address was returned as undeliverable. (Audio Record at 1:15:52 - 1:16:45.) The Debtor did not appear at the Second Hearing. At the conclusion of the Second Hearing, the court took the matter under advisement;

WHEREAS, the Complaint seeks denial of the Debtor’s chapter 7 discharge pursuant to 11 U.S.C. § 727(a)(8);⁵

² A hearing (the “Second Hearing”) was set for September 7, 2005 in the Re-servicing Order but was rescheduled for November 2, 2005. (See Adv. Pro. Doc. I.D. No. 23.)

³ “[T]he (1) Greens Farms address; (2) Delray Beach address; and (3) the West Palm Beach address.” (Adv. Pro. Doc. I.D. No. 20.)

⁴ References herein to the audio record of the Second Hearing appear in the following form: “Audio Record at __:__:__.”

⁵ Section 727(a)(8) provides in relevant part:

(a) The court shall grant the debtor a discharge, unless—

...
(8) the debtor has been granted a discharge under this section . . . in a case commenced within six years before the date of the filing of the petition

WHEREAS, the undersigned judge takes judicial notice of the records of this court to find as follows:

A. The Debtor commenced a prior title 11 case (Case No. 94-51677) in this district on August 16, 1994. (*See* Prior Case Doc. I.D. No. 1.) The Debtor received a chapter 7 discharge in that case on September 17, 1996. (*See* Prior Case Doc. I.D. No. 108.)


B. The Debtor commenced this title 11 case⁶ on May 30, 2000;

WHEREAS, the court concludes that, based upon the foregoing, the Debtor cannot be granted a discharge under 11 U.S.C. § 727(a)(8);

NOW, THEREFORE, it is hereby **ORDERED** that, pursuant to Rule 7055 of the Federal Rules of Bankruptcy Procedure, the Motion is granted and judgment shall enter denying the Debtor a discharge in this chapter 7 case.

BY THE COURT

Dated: November 9, 2005


Lorraine Murphy Weil
United States Bankruptcy Judge

11 U.S.C.A. § 727(a)(8) (West 2005).

⁶ This case was commenced as a chapter 11 case. (*See* Case Doc. I.D. No. 1.) The case was converted to a chapter 7 case on June 23, 2004. (*See* Case Doc. I.D. No. 81.)