

allegations of fact" and that such facts must provide "a sufficient basis . . . for the judgment"); see also *Mayflower Transit v. Troutt*, 332 F. Supp. 2d 971, 975 (W.D. Tex. 2004). At that hearing, Bouget and Walker did not seek judgment on their claim based on Oliphint's non-suiting their case against NCHA. Instead, they sought judgment only as to the claim based on Oliphint's failure to respond to the NCHA's summary-judgment motion. In their complaint, Bouget and Walker alleged that the summary judgment resulted from Oliphint's failure to respond. Oliphint testified at the hearing, acknowledged that he did not respond, and conceded that there was no legal reason that a default judgment should not be entered against him. With these observations, the Court concludes that the pleadings support Plaintiffs' requested judgment.

Moreover, there are no procedural impediments to entry of a default judgment. Oliphint is not an infant or an incompetent person. *Cf.* Fed. R. Civ. P. 55(b)(2). Nor is he in military service. *Cf.* 50 U.S.C. App. § 501. And Oliphint, despite never filing an answer or other response to Plaintiffs' complaint, was notified of the pending motion for default judgment and appeared at the default-judgment hearing. See Fed. R. Civ. P. 55(b)(2) (discussing need for notice to party against whom judgment is to be entered). Accordingly, it is appropriate to enter default judgment in favor of Plaintiffs and their motion for default judgment is GRANTED.

The parties also addressed the issue of damages at the hearing. Neither the entry of a defendant's default nor a default judgment establishes the amount of damages. The damages award must be supported by competent proof and, generally, a hearing is necessary on the issue of damages. See *United States use of M-Co Constr., Inc. v. Shipco Gen., Inc.*, 814 F.2d 1011, 1014 (5th Cir. 1987); see also *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979); *Lijadu v. INS*, No. 06-0518, 2009 U.S. Dist. LEXIS 15101, *1-4 (W.D. La. Feb. 26, 2009) (assessing "summary-judgment evidence" of damages in default judgment). In their complaint, Bouget and Walker claimed that the judgment against them in the Texas court was for over \$88,000. But during the hearing their proof of damages consisted of the judgment of the Texas court, which awarded to the NCHA \$67,728.50 in attorneys' fees and all court costs. There is no mention in the judgment of interest. Nevertheless, the Court granted to Plaintiffs' counsel ten days from the hearing to file a supplemental brief addressing Plaintiffs' entitlement to recover interest on the judgment, as well as to provide the Court with proof of the amount of costs from the Texas suit. Accordingly, default judgment is GRANTED in favor of plaintiffs in the amount \$66,728.50, with the Court to enter an additional order on the matters of interest and costs once Plaintiffs' counsel has submitted his additional briefing and evidence.

Plaintiffs also seek recovery of attorneys' fees and costs

resulting from this litigation. As the prevailing party, they are entitled to recovery of costs and these will be awarded in the final judgment after all matters relevant to the motion for default judgment are resolved. See Fed. R. Civ. P. 54(d). As for attorneys' fees, those must be sought by a separate motion filed after the Court enters final judgment. See *id.* The motion must set out the amount of fees sought and specify the statute, rule, or other ground entitling Plaintiffs to recovery of attorneys' fees. See *id.*; see also *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975) (discussing the American rule, generally applied in federal litigation, which provides that litigants pay their own legal fees).

SIGNED April 30, 2010.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

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