

**FILED & ENTERED**

**SEP 18 2015**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY Bever DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re: ) Chapter 13  
DORON HIMMELMAN, )  
Debtor. ) Adv. Case No. 1:15-ap-01014-MB

— )  
DORON HIMMELMAN, an individual, ) **ORDER IMPOSING MONETARY  
Plaintiff, ) SANCTION ON A.O.E. LAW FIRM  
FOR VIOLATION OF THE LOCAL  
BANKRUPTCY RULES**

v. ) Hearings  
DANIEL B. RUBINSTEIN, M.D., an ) Date: May 20 & July 1, 2015  
individual; JACOB N. SEGURA, ESQ., an ) Time: 2:30 p.m.  
individual; JACOB N. SEGURA, A LAW ) Place: 21041 Burbank Blvd.,  
CORPORATION, a California corporation, ) Woodland Hills, CA 91367  
and DOES 1 through 50, inclusive, ) Courtroom: 303  
Defendants. )

On May 20, 2015 and July 1, 2015, the Court held hearings before the undersigned United States Bankruptcy Judge in Courtroom 303, at 21041 Burbank Blvd, Woodland Hills, CA 91367, on Defendants' motion to dismiss the complaint in this adversary proceeding, Adv. Dkt. 6 (the "Motion"), pursuant to Fed. R. Civ. P. 12(b)(6).

1 Plaintiff, the above-referenced debtor in this chapter 13 case, is represented in this  
2 adversary proceeding by A.O.E. Law Associates (“AOE”). At the May 20, 2015 hearing, Victoria  
3 Orafa, Esq., an associate at AOE, appeared on behalf of Plaintiff. At the July 1, 2015 hearing,  
4 Adam Apollonio, Esq., also an associate at AOE, appeared on behalf of Plaintiff.

5 Defendants Dr. Daniel B. Rubinstein, M.D., Jacob N. Segura, an individual, and Jacob N.  
6 Segura, A Law Corporation, are represented by Jacob N. Segura, A Law Corporation, which  
7 appeared at both hearings through Jacob N. Segura.

8 Defendants filed the Motion on March 12, 2015, along with other documents in support  
9 thereof. Adv. Dkt. Nos. 6, 7, 8, & 9. On the same day, these pleadings were served on the  
10 Plaintiff’s counsel, AOE. Adv. Dkt. No. 10. These pleadings indicated a hearing date of April 22,  
11 2015. By written notice, filed and served by the Clerk of the Court on March 18, 2015, the Court  
12 reset the hearing date for May 20, 2015 at 2:30 p.m. Adv. Dkt. No. 12.

13 Under Local Bankruptcy Rule 9013-1(f), any party opposing or responding to a motion  
14 must file and serve its response on the moving party and the United States Trustee “not later than  
15 14 days before the date designated for hearing.” Pursuant to this Local Bankruptcy Rule, the  
16 deadline for the filing and service of any response or opposition to the Motion was May 6, 2015 –  
17 i.e., 14 days prior to the May 20, 2015 hearing.

18 Plaintiff did not file any response or opposition to the Motion by May 6, 2015. Instead,  
19 Plaintiff filed an opposition on Friday, May 15, 2015, at approximately 6:30 p.m., through  
20 Anthony O. Egbase, a partner in AOE. Filing an opposition at this late date put Defendants at a  
21 tactical disadvantage. This filing not only came after the opposition deadline under Local  
22 Bankruptcy Rule 9013-1(f), but after the deadline for Defendants to file a reply to any opposition,  
23 which deadline was May 13, 2015, as provided in Local Bankruptcy Rule 9013-1(g). Further,  
24 Plaintiff did not file a motion seeking to continue the hearing and did not file a motion seeking  
25 leave to file his late opposition.

26 At the hearing held May 20, 2015, the Court advised Ms. Orafa of AOE, that Plaintiff’s  
27 late filing of an opposition under these circumstances violated the Local Bankruptcy Rules and  
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1 had prejudiced Defendants. The Court considered the possibility of striking the late opposition,  
2 but observed that this would result in the granting of the motion and dismissal of the adversary  
3 proceeding by default (i.e., for lack of any opposition), which is a disfavored result. *See*  
4 *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1189 (9th Cir. Nev. 2009) (“As a general  
5 rule, default judgments are disfavored; cases should be decided upon their merits whenever  
6 reasonably possible.”) (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.  
7 1985)).

8         Instead, the Court determined that the hearing should be continued and the Defendants  
9 given an opportunity to respond to the Plaintiff’s opposition to the Motion. That continuance,  
10 which resulted for no other reason than Plaintiff’s failure to timely file his opposition in  
11 accordance with Local Bankruptcy Rule 9013-1(f), required the Defendants’ counsel to appear at a  
12 second hearing on the Motion and required the Defendants to incur the additional cost of that  
13 appearance.

14         The Local Bankruptcy Rules permit the imposition of monetary sanctions for the violation  
15 of those rules. Local Bankruptcy Rules 1001-1(f), 9011-3(a). Accordingly, all or a portion the  
16 additional costs incurred as a result of Plaintiff’s late-filed opposition may be imposed as a  
17 monetary sanction.

18         At the May 20, 2015 hearing, the Court advised Ms. Orafa, of AOE, that the Court would  
19 impose a sanction against AOE based on AOE’s violation of Local Bankruptcy Rule 9013-1(f)  
20 and the additional cost imposed on the Defendants as a direct result of that violation (i.e., the cost  
21 of attending a continued hearing). The Court ordered Defendants to file a declaration establishing  
22 the extent of those additional costs. The Court indicated it would thereafter consider the  
23 appropriate amount of the sanction.

24         On June 9, 2015, Defendants filed and served notice of the outcome of the May 20 hearing,  
25 indicating: (i) that the hearing on the Motion was continued to July 1, 2015, (ii) that Defendants  
26 were required to submit a declaration regarding the fees incurred in connection with their  
27 counsel’s appearance at the original hearing, and (iii) that the Court would consider the  
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1 appropriate amount of the sanction against AOE at the July 1 hearing. Adv. Dkt. 23.

2 On June 10, 2015, Defendants filed the declaration of Jacob N. Segura ("Segura  
3 Declaration") explaining that Defendants incurred 4.5 hours of attorney time in connection with  
4 the May 20, 2015 hearing, totaling \$1,800, and requesting that the Court impose a sanction against  
5 the Plaintiff and his counsel in that amount. Adv. Dkt. 25.

6 At the hearing held July 1, 2015, the Court heard argument regarding the appropriate  
7 amount of the sanction from both Mr. Apollonio, on behalf of AOE, and Mr. Segura, on behalf of  
8 the Defendants. After review and consideration of the Segura Declaration and the arguments of  
9 counsel, the Court announced that it would impose a sanction on AOE in the amount of \$800,  
10 payable to the Defendants.<sup>1</sup>

11 Based on the foregoing, it is hereby **ORDERED**:

12 1. A.O.E. Law Associates shall remit to Jacob N. Segura, A Law Corporation, on  
13 behalf of Defendants, the sum of \$800.00, no later than October 16, 2015.

14 2. The Court shall retain jurisdiction to enforce this Order, notwithstanding the  
15 dismissal of this adversary proceeding.

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23 Date: September 18, 2015



24 Martin R Barash  
25 United States Bankruptcy Judge

26 <sup>1</sup> The Court also heard argument on the Motion, which was granted. The dismissal of this  
27 adversary proceeding is addressed in a separate order.  
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