

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 13-0853 (RLW)
	)	
BIASSI BUSINESS SERVICES, INC.,	)	
	)	
Defendant.	)	
_____	)	

**UNITED STATES’ MOTION FOR DEFAULT JUDGMENT**

By and through its undersigned counsel, the United States of America (“United States” or Government”) respectfully moves for default judgment against Defendant Biassi Business Services, Inc., (“BBSI”) pursuant to Federal Rule of Civil Procedure (“Rule”) 55(b)(2). Specifically, the United States respectfully requests that the Court direct the Clerk to enter a judgment against BBSI in the amount of \$200,000.00 in statutory civil fines under the Lobbying Disclosure Act (“LDA”). The grounds for the motion are as follows.

**Factual Background**

As alleged in the Government’s Complaint,<sup>1</sup> BBSI is a business whose principal place of business and last known address is 942 Woodfield Road, West Hempstead, NY 11552. Compl. ¶ 7. BBSI is an incorporated business entity owned and operated by its principals, Mensah A. Biassi and Patricia Ann Biassi. Compl. ¶ 8.

<sup>1</sup> The Clerk of the Court entered default against BBSI on August 27, 2013. R.6. Accordingly, the well-pled allegations in the Government’s Complaint are deemed admitted. See, e.g., *Guarantee Co. of N. Am. USA v. Barrera*, 908 F. Supp. 2d 39, 42 (D.D.C. 2012) (Kollar-Kotelly, J.) (granting motion for default judgment).

**A. BBSI Registered as a Lobbying Firm and Identified Its Lobbyists.**

On or about September 1, 2001, BBSI filed a lobbying registration statement with the House and Senate registering itself as a lobbying firm and identifying The Africa Committee, Inc. as its sole client. Compl. ¶ 14; *see also* Registration Stmt. of 9/1/2001, attached hereto as Exhibit 1 (“Mot. Ex. 1”). BBSI’s September 2001 registration statement identified Mensah A. Biassi and Patricia Ann Biassi as the points of contact for BBSI and the lobbyists employed by BBSI. Compl. ¶ 15. Mensah A. Biassi, as CEO of BBSI, signed the September 2001 registration statement. Compl. ¶ 16.

On February 28, 2009, BBSI filed an amended registration statement. Compl. ¶ 17. This amended registration statement continued to identify BBSI as a lobbying firm and its sole client as The Africa Committee, Inc. Compl. ¶ 17. BBSI’s February 2009 amended registration statement continued to list Mensah A. Biassi and Patricia Ann Biassi as lobbyists and identified three additional persons employed by BBSI as lobbyists, namely (i) Kouevi Adamah, (ii) Koffi Feliz Houngebeke, and (iii) Bright Ekue Adamah-Biassi. Compl. ¶ 18. Mensah A. Biassi, as Associate Director of BBSI, signed BBSI’s February 2009 amended registration statement. Compl. ¶ 19.

**B. The LDA Requires Lobbying Firms to File Lobbying Activity and Contribution Reports.**

The LDA requires individual lobbyists and lobbying firms or organizations employing in-house lobbyists (i.e., “registrants”) to provide periodic reports of lobbying activity to the House and Senate. Compl. ¶ 9 (citing 2 U.S.C. § 1604(a)-(d)). The LDA was amended effective January 1, 2008, by the Honest Leadership and Open Government Act of 2007 (“HLOGA”) to require more frequent reports of lobbying activity and the filing of semiannual reports detailing contribution activities. Compl. ¶ 10. As of January 1, 2008, registrants are required to file

quarterly reports of lobbying activity for each of their clients on LD-2 forms with the Secretary of the Senate and Clerk of the House. Compl. ¶ 11 (citing 2 U.S.C. § 1604(a)-(c)). These LD-2 reports are due “no later than 20 days after the end of the quarterly period beginning on the first day of January, April, July, and October of each year in which a registrant is registered . . . , or on the first business day after such 20th day if the 20th day is not a business day[.]” Compl. ¶ 11 (quoting 2 U.S.C. § 1604(a)).

Further, as of January 1, 2008, individual lobbyists and registrants are required to file semi-annual reports of contribution activities on LD-203 forms with the Secretary of the Senate and Clerk of the House. Compl. ¶ 12 (citing 2 U.S.C. § 1604(d)). These LD-203 reports are due “not later than 30 days after the end of the semiannual period beginning on the first day of January and July of each year, or on the first business day after such 30th day if the 30th day is not a business day[.]” Compl. ¶ 12 (quoting 2 U.S.C. § 1604(d)(1)). The LDA also requires registrants to file termination reports should they cease to represent a client and amended registration statements to add or subtract a registrant’s active lobbyists. Compl. ¶ 13 (citing 2 U.S.C. § 1603(d); 2 U.S.C. § 1604(d)).

**C. In Mid-2009, BBSI Began Its Habitual Practice of Knowingly Failing to File Timely LD-2 Reports and Failing to Correct Delinquent Reports After Notice.**

Shortly after BBSI’s amended registration, BBSI began to be delinquent in filing its required LD-2 reports. Compl. ¶ 20. BBSI failed to file timely its Senate and House LD-2 reports for the first quarter of 2009, which were due on Monday, April 20, 2009. Compl. ¶ 21. Consequently, on or about May 12, 2009, the Secretary of the Senate wrote BBSI providing notice of its violation and demanding that BBSI remedy its delinquency within 60 days. Compl. ¶ 22; *see also* Letter of 5/12/2009, Mot. Ex. 2. Presumably in response to the Senate’s notice,

BBSI filed its first quarter 2009 LD-2 reports with the House and Senate on or about May 13, 2009. Compl. ¶ 23; *see also* BBSI Q1 2009 Senate LD-2 Report, Mot. Ex. 3.<sup>2</sup>

If BBSI was otherwise unaware of the post-HLOGA LD-2 filing requirements of the LDA, this exchange in May 2009 plainly made BBSI aware of them. Compl. ¶ 24. Further, BBSI has received numerous similar delinquency notices from the House and Senate since May 2009, which made BBSI well aware of its LD-2 filing obligations. Compl. ¶ 25; *see also* Letters from Congress to BBSI re: LD-2 Reports, Mot. Ex. 4.

Despite BBSI's knowledge of the LDA LD-2 filing requirements, after May 2009 BBSI committed numerous separate violations of them. Compl. ¶ 26. Specifically, despite its plain knowledge of the post-HLOGA LD-2 filing requirements, BBSI failed to file timely LD-2 reports for fourteen (14) quarters, totaling twenty-eight (28) delinquent reports, as detailed in Paragraph 27 of the Government's Complaint and the table attached hereto as Exhibit 5. Compl. ¶ 27; *see also* Summary of BBSI LD-2 Violations, Mot. Ex. 5.

Not only did BBSI fail to file the above noted LD-2 reports on a timely basis, but for a number of these LD-2 reports, BBSI also failed to file them within 60 days of receiving delinquency notices from the House and Senate. Compl. ¶ 28. Specifically, BBSI failed to file LD-2 reports within 60 days of receiving delinquency notices from the House and Senate on the thirteen (13) occasions detailed in Paragraph 29 of the Government's Complaint and in the table

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<sup>2</sup> All Senate and House LD-2 and LD-203 reports are publicly available through the Senate and House websites. *See* Senate LDA Website, [http://www.senate.gov/legislative/Public\\_Disclosure/LDA\\_reports.htm](http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.htm) (Last visited 10/21/2013); House LDA website, [http://lobbying\\_disclosure.house.gov/](http://lobbying_disclosure.house.gov/) (Last visited 10/21/2013).

attached hereto as Exhibit 5. Compl. ¶ 29; *see also* Summary of BBSI LD-2 Violations, Mot. Ex. 5.<sup>3</sup>

**D. BBSI's LDA Violations Spread to Include Failures to File LD-203 Reports for Itself, as a Registrant, and Its Employed Lobbyists.**

BBSI's LDA filing delinquencies were not limited to LD-2 reports. Compl. ¶ 30. Instead, BBSI also habitually ignored its obligation to file LD-203 contribution reports on its own behalf and on behalf of its employed lobbyists. *Id.* Specifically, despite receiving numerous notices from the House and Senate regarding BBSI's failures to file LD-203 reports, BBSI failed to file timely LD-203 reports for eight (8) semiannual periods, totaling ninety-six (96) delinquent reports, as detailed in Paragraph 31 of the Government's Complaint and the table attached hereto as Exhibit 6. Compl. ¶ 31; *see also* Table, Summary of BBSI LD-203 Violations, Mot. Ex. 6.

Not only did BBSI fail to file the above noted LD-203 reports on a timely basis, but for a number of these LD-203 reports, BBSI also failed to file them within 60 days of receiving delinquency notices from the House and Senate. Compl. ¶ 32. Specifically, BBSI failed to file LD-203 reports within 60 days of receiving delinquency notices from the House and Senate on nine (9) occasions, totaling twenty-eight (28) reports that BBSI failed to file within 60 days of notice, as detailed in Paragraph 33 of the Government's Complaint and the table attached hereto as Exhibit 6. Compl. ¶ 33; *see also* Table, Summary of BBSI LD-203 Violations, Mot. Ex. 6.<sup>4</sup>

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<sup>3</sup> The LD-2 delinquency notices sent by the House and Senate to BBSI and referenced in Paragraph 29 of the Government's Complaint are also enclosed herewith. *See* Letters from Congress to BBSI re: LD-2 Reports, Mot. Ex. 4.

<sup>4</sup> The LD-203 delinquency notices sent by the House and Senate to BBSI and referenced in Paragraph 33 of the Government's Complaint are also enclosed herewith. *See* Letters from Congress to BBSI re: LD-203 Reports, Mot. Ex. 7.

Additionally, BBSI ignored or failed to respond to numerous letters sent by the U.S. Attorney's Office for the District of Columbia to BBSI regarding its LDA violations. Compl. ¶¶ 34; *see also* Letters from USAO to BBSI re: LDA Violations, Mot. Ex. 8.

**E. After the Government Instituted this Action, BBSI Late-Filed Certain Delinquent Reports and Terminated its Lobbying Registration.**

After receiving notice through the press that the Government filed its suit, on June 11, 2013, BBSI late-filed four LD-2 reports for the period from second quarter 2012 to the second quarter of 2013 and four LD-203 reports on behalf of BBSI and Mensah Biassi for the same period.<sup>5</sup> *See* Reports filed 6/11/2013, Mot. Ex. 9. On July 31, 2013, BBSI filed an LD-2 report for the second quarter of 2013 and indicated on that report that it was terminating its lobbying registration purportedly retroactive to July 1, 2005. *See* Reports filed 7/31/2013, Mot. Ex. 10. BBSI was again tardy in filing this report -- it was due on July 22, 2013 -- and the LD-203 reports it filed on behalf of BBSI and Mensah Biassi on the same date for the first half of 2013. *Id.* Nonetheless, by terminating its registration on July 31, 2013, BBSI will likely not incur future LDA violations.

**Procedural History**

On June 7, 2013, the Government filed its Complaint in this action, which it served on BBSI on July 8, 2013. R.1 (Compl.); R.3 (Return of Service). After BBSI failed to answer or otherwise appear in the time provided by the Rules, on August 26, 2013, the Government filed an affidavit for default, and the Clerk entered default against BBSI on August 27, 2013. R.4

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<sup>5</sup> As stated in its Complaint, the Government's allegations in this action cover LDA violations committed by BBSI up through year-end 2012. *See* Compl. ¶¶ 27, 31. On June 11, 2013, BBSI filed an LD-2 report for the first quarter of 2013, which again was late (the report was due on April 22, 2013, but BBSI did not file until June 11, 2013). *See* Reports filed 6/11/2013, Mot. Ex. 9.

(Aff. of Default); R.6 (Entry of Default). Although the Government has continued to serve its filings in this action on BBSI, BBSI has failed to appear in this action to date.

### **Argument**

“Obtaining a default judgment under Rule 55 is a two-step process. Once default has been entered, the first step, the plaintiff may move for default judgment.” *Embassy of Fed. Republic of Nigeria v. Ugwuonye*, --- F. Supp. 2d ---, 2013 WL 3816399, \*6 (D.D.C. Jul. 24, 2013) (Rothstein, J.) (granting motion for default judgment) (citing Fed. R. Civ. P. 55). “While default establishes the defaulting party’s liability for the well-pleaded allegations of the complaint, it does not establish the amount of damages for which a defendant is liable. Unless a plaintiff’s claim can be made certain by computation, as evidenced by an affidavit showing the amount due, the plaintiff seeking a default judgment must apply to the Court. A court may conduct a hearing, but is not required to do so if it ensures that there is a basis for the damages specified in the default judgment.” *Id.* (internal citations omitted); *see also City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 137 (2d Cir. 2011) (“prior to entering default judgment, a district court is required to determine whether the plaintiff’s allegations establish the defendant’s liability as a matter of law”) (internal quotation and correction marks omitted).

Accordingly, on a motion for default judgment, a plaintiff must show (a) that the well-pleaded facts are sufficient to establish the legal requirements of the causes of action pled by plaintiff, and (b) that there exists an adequate basis for the claimed damages. At bottom, “[t]he determination of whether default judgment is appropriate is committed to the discretion of the trial court.” *Int’l Painters & Allied Trades Indus. Pension Fund v. Auxier Drywall, LLC*, 531 F.

Supp. 2d 56, 57 (D.D.C. 2008) (Huvelle, J.) (entering default judgment).<sup>6</sup> Here, no hearing should be required as the facts alleged in the Complaint present a valid claim for relief and the remedy sought by the Government is reasonable based on BBSI's violations and applicable legal factors.

**A. The Facts Pled by the Government and Detailed Above Adequately Support the Government's LDA Claims In this Action.**

The well-pleaded facts in the Government's complaint are sufficient to state a cause of action under the LDA's civil monetary fine provisions. As noted above, the LDA requires registered lobbying firms to file quarterly LD-2 reports of lobbying activity and semi-annual reports of contribution activity. *See supra* at 2-3 (citing 2 U.S.C. §§ 1604(a), 1604(d)). Section 1606(a) of Title 2 provides that "[w]hoever knowingly fails to -- (1) remedy a defective [LDA] filing within 60 days after such a defect by the Secretary of the Senate or the Clerk of the House of representatives; or (2) comply with any other provision of [the LDA]; shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than \$200,000, depending on the extent of the violation." 2 U.S.C. § 1606(a).

Accordingly, provisions in this context, to state a cause of action under the LDA's civil penalty the Government must allege:

- (i) that the person or firm is registered as a lobbyist or lobbying firm, respectively;
- (ii) either that person or firm (a) failed to file timely LD-2 or LD-203 reports; or (b) failed to remedy defective filings within 60 days after notice; and
- (iii) that person or firm acted knowingly with regards to the failure.

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<sup>6</sup> Because "default judgments are generally disfavored by courts" (*see Creecy v. Kellibrew*, --- F.R.D. ---, 2013 WL 3340343, \*2 (D.D.C. Jul. 3, 2013) (Contreras, J.)), and in the interests of justice, the Government waited to file this motion for several months to provide BBSI an opportunity to appear and be heard in this matter. BBSI has neither appeared in this action nor sought to vacate the Clerk's entry of default as of this date.

The well-pleaded facts in the Government's complaint satisfy each of these elements.

*First*, the Government pleads that BBSI is a registered lobbying firm and reference the document BBSI filed to become such a registered firm, which is enclosed herewith. *See* Compl. ¶ 14; *also* Registration Stmt. of 9/1/2001, Mot. Ex. 1.

*Second*, the United States pled BBSI's specific untimely or delinquent filings and specific failures to remedy its defective filings in detailed listings in its Complaint, which are also summarized in tables enclosed herewith. *See* Compl. ¶¶ 27, 29, 31, 33; Summary of BBSI LD-2 Violations, Mot. Ex. 5; Summary of BBSI LD-203 Violations, Mot. Ex. 6.

*Third, and lastly*, the Government pled sufficient facts to establish that BBSI's failures were knowingly. The Rules permit plaintiffs to plead intent or knowledge generally. Fed. R. Civ. P. 9(b). Here, the Government not only pled BBSI's knowledge generally, but also alleged specific facts establishing BBSI's knowledge. For example, the Complaint contains averments that BBSI knew the LDA require it to file reports as evidenced by its own filings. *See, e.g.*, Compl. ¶¶ 20-25. Also, the Government alleges that BBSI received numerous delinquency notices specifically informing BBSI of its obligations to file LD-2 and LD-203 reports and its failures to do so. *See, e.g.*, Compl. ¶¶ 22, 29, 33. These allegations establish that BBSI acted knowingly in failing to comply with the LDA.

**B. The Amount Requested by the United States as a Monetary Fine is Reasonable and Just in Light of BBSI's Habitual Violations and Applicable Law.**

In its Complaint, the Government identified 124 occasions on which BBSI knowingly failed to file timely LDA reports and 41 occasions on which BBSI failed to remedy defective filings within 60 days of notice from the Senate or House, totaling 145 separate LDA violations. *See* Compl. ¶¶ 27, 29, 31, 33, 39, 41; *see also* Summary of BBSI LD-2 Violations, Mot. Ex. 5; Summary of BBSI LD-203 Violations, Mot. Ex. 6. Despite this plethora of violations and the

potential assessment of \$200,000 for each, in the interests of justice, the Government in default seeks only a \$200,000 monetary fine representing the maximum for a single LDA violation. This sum is reasonable and prudent in light of controlling and persuasive authorities.

The civil monetary provision of the LDA identifies two factors to consider in assessing an appropriate fine -- namely “the extent and gravity of the violation.” 2 U.S.C. § 1606(a). Also, as general matters, courts have recognized that factors to consider in setting an appropriate penalty may include specific and general deterrence. *Cf. United States v. Scroggins*, 880 F.2d 1204, 1206 (11th Cir. 1989) (discussing historical purposes of criminal penalties). The Government believes that the balancing of these four factors supports the imposition of a fine in the amount of \$200,000, representing the maximum penalty for a single violation or roughly \$1,380 for each of BBSI’s violations.

*First*, BBSI’s violations are reasonably extensive. For a period of four years (from 2009 to 2013), BBSI repeatedly and blatantly ignored its LDA filing requirements despite receiving notice after notice of delinquencies by the House, the Senate, and ultimately the Department of Justice. As such, this “extent” factor weighs in favor of a stiffer penalty.

*Second*, BBSI’s violations are not terribly grave. Although BBSI failed to file its reports of lobbying and contribution activity, all LDA reports BBSI has filed indicate that its lobbying activities were largely dormant during the last four years. That is, each report reflect minimal or no lobbying or contribution activity. *See, e.g.*, BBSI Q1 2009 Senate LD-2 Report, Mot. Ex. 3; Reports filed 6/11/2013, Mot. Ex. 9; Reports filed 7/31/2013, Mot. Ex. 10. The purpose of the LDA is “[t]o provide for the disclosure of lobbying activities to influence the Federal Government[.]” LDA, Pub. L. No. 104-65, 109 Stat. 691 (1995). BBSI’s violations do not

appear to thwart substantially this purpose, and thus, the “gravity” factor weighs in favor of a more lenient penalty.

*Third*, specific deterrence as a factor appears to weigh in favor a more lenient penalty. That is, BBSI’s lobbying activities have largely been dormant over the past four years and BBSI has now terminated its lobbying registration. As such, it does not appear that an increased fine will specifically deter BBSI from violations when it has already terminated its lobbying registration.

*Fourth, and lastly*, general deterrence as a factor weighs in favor of a more significant penalty. As the Government Accountability Office (“GAO”) has noted, hundreds of lobbyists are referred each year to the U.S. Attorney’s Office for delinquencies in filing LD-2 and LD-203 reports. *See* GAO Report 13-437 (April 2013) at 20-21, Mot. Ex. 11. Evaluating, processing, and acting on these referrals occupies scarce law enforcement resources. While most lobbying organizations promptly remedy delinquencies after being contacted by the Department of Justice as reported by GAO, the need to reduce referrals and emphasize compliance with preliminary enforcement efforts is an important objective. This important objective is supported by civil actions such as this promoting general deterrence.

In sum, a weighing of these factors reasonably supports the entry of a default judgment in the amount of \$200,000.00 against BBSI as a civil monetary fine.

\* \* \*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of October, 2013, I caused a true and correct copy of the foregoing to be served on Defendant by first-class mail to:

Mensah A. Biassi  
Biassi Business Services, Inc.  
316 Main Street #D  
Roslyn, NY 11576

/s/

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