

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:08-bk-0762-ABB  
Chapter 7

DAVID M. DANIEL and  
NICHOLE Y. DANIEL,

Debtors.

\_\_\_\_\_ /  
MBNA America Bank NA,

Plaintiff,

vs.

Adv. Pro. No. 6:08-ap-00177-ABB

NICHOLE Y. DANIEL,

Defendant.  
\_\_\_\_\_ /

**ORDER SETTING FINAL  
EVIDENTIARY HEARING**

This matter came before the Court on the Motion for Summary Final Judgment (Doc. No. 12) ("Motion") filed by MBNA America Bank NA, the Plaintiff herein ("Plaintiff"), requesting summary judgment on its Complaint (Doc. No. 1) be entered in favor of the Plaintiff and against the Defendant Nichole Daniel. The Plaintiff asserts it is entitled to judgment on the basis the Defendant failed to respond to its First Request for Admissions.

The Plaintiff attached to its Motion a Certificate of Service reflecting it served on the Defendant its First Request for Admissions on December 16, 2008, but did not provide a copy of the First Request for Admissions. A hearing was held on July 14, 2009 at which counsel for the Plaintiff appeared. The Plaintiff was directed to file a copy of the First Request for Admissions. The Plaintiff has not filed the document. The Plaintiff has failed to establish it is entitled to summary judgment pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of Bankruptcy Procedure 7056. The Plaintiff's Motion is due to be denied and this matter is due to be set for a final evidentiary hearing.

Accordingly, it is

**ORDERED, ADJUDGED and  
DECREED** that that the Plaintiff's Motion (Doc. No. 12) is hereby **DENIED**; and it is further

**ORDERED, ADJUDGED and  
DECREED** that the final evidentiary hearing on the Plaintiff's Complaint (Doc. No. 1) is scheduled for August 18, 2009 at 2:00 p.m. in Courtroom A, Fifth Floor, 135 West Central Boulevard, Orlando, Florida 32801

Dated this 23<sup>rd</sup> day of July, 2009.

*/s/Arthur B. Briskman*  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge