

COURT OF COMMON PLEAS
ENTER
Beth A. Myers
HON. BETH A. MYERS
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

ENTERED
DEC 23 2010

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

EXHIBIT
N

HADASSAH, THE WOMEN'S ZIONIST
ORGANIZATION OF AMERICA, INC.,

Plaintiff,

v.

ROBERT L. SCHWARTZ, et al.,

Defendants.

Case No. A0900399

Judge Beth A. Myers

DECISION ON MOTION
FOR DEFAULT JUDGMENT

This case is before this Court on Plaintiff's Motion for Default Judgment. The default judgment is sought as a sanction for failure to provide discovery pursuant to Rule 37(B)(2)(c) of the Ohio Rules of Civil Procedure.

Civ. R. 37(B)(2)(c) provides as follows

If any party or an officer, director, or managing agent of a party or a person designated under Rule 30(B)(5) or Rule 31(A) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (A) of this rule and Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

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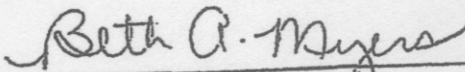
The Ohio First District Court of Appeals has stated as follows:

In recognition of the severity of the Civ.R. 37 sanction of default judgment, the Ohio Supreme Court has held, consistent with the position of the United States Supreme Court in Societe Internationale v. Rogers (1958), 357 U.S. 197, 78 S.Ct. 1087, that "[i]t is an abuse of discretion for a trial court to grant a default judgment for [the] fail[ure] to respond to discovery requests when the record does not show willfulness or bad faith on the part of the responding party." Toney v. Berkemer (1983), 6 Ohio.St.3d 455, syllabus; see, also, Clayton v. Camargo Cadillac (Sept. 13, 1989), Hamilton App. No. C-880625, unreported; Mr. D. Realty Co. v. Ahern (Jan. 30, 1987), Hamilton App. No. C-860256, unreported; Eastlack v. Anderson (Feb. 12, 1986), Hamilton App. No. C-850142, unreported.

Short v. Ralston (1st Dist. Ohio 1992), 1992 WL 2562, unreported.

Mr. Schwartz was noticed for his deposition for Friday, July 23, 2010. This was Plaintiff's fifth attempt to notice and depose Mr. Schwartz. Three of the scheduled depositions were continued or rescheduled at Mr. Schwartz' request. Mr. Schwartz failed to appear at the courthouse on July 26, 2010 to have his deposition taken, as ordered by the Court. This was in willful disregard of this Court's order during a conference with counsel on July 23, 2010 that he do so. The Court finds that Mr. Schwartz' absence was willful and that default judgment in favor of Plaintiff and against Robert L. Schwartz on Counts IV, V and VI, as previously limited by the Court, and on Count VII, is appropriate.

The parties are directed to submit an Entry pursuant to Local Rule 17.



Judge Beth A. Myers

ENTER
DEC 22 2010
BETH A. MYERS, JUDGE