IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ELIZABETH B. MAHONEY, a/k/a ELIZABETH B. RICHARDSON Plaintiff v. AVANTIX LABORATORIES INC., Defendant	)	C.A. No. 06C-06-332 RRC

Submitted: March 1, 2007
Decided: March 13, 2007

Upon Defendant's Motion to Vacate Default Judgment.
DENIED.

ORDER

COOCH, J.

This 13th day of March 2007, upon consideration of Defendant's motion to vacate default judgment, it appears to the Court that:

1. On June 30, 2006, Plaintiff filed a complaint in this Court seeking damages for sexual discrimination. Defendant was served with the summons and complaint on July 14, 2006.[1] Defendant admits service of the

[1] Defendant had previously retained different counsel to represent it in this matter before it reached the Superior Court. After Plaintiff received her right to sue letter from

complaint; however, Defendant did not file an answer or any other responsive pleading. Subsequently this Court granted Plaintiff's motion for a default judgment pursuant to Superior Court Civil Rule 55 on September 12, 2006. Plaintiff had sent Defendant notice of the September 12 default judgment hearing, but no one attended the hearing on Defendant's behalf. Plaintiff's counsel sent a copy of the order to Defendant, who acknowledged receipt of the order in a September 20, 2006 email.[2]

2. Following the entry of default judgment, on October 19, 2006 this Court sent Plaintiff and Defendant an "Order of Reference" of this case to a Commissioner for an inquisition hearing. Additionally, on October 25, 2006 the Court sent Plaintiff and Defendant notice of a December 7, 2006 inquisition hearing. Again, no one appeared at the inquisition hearing on behalf of Defendant. On December 28, 2006, the Commissioner entered an inquisition award in favor of Plaintiff of $16,777 in compensatory damages, $33,554 in punitive damages, $9,898 in attorney's fees, and $444.76 for fees and costs. The Commissioner's order was sent to Defendant on December 28, 2006, but no timely objection was filed.[3] On February 12, 2007, the

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the EEOC, Plaintiff's counsel sent an offer of compromise to Defendant's then counsel. However, at that time, Defendant's counsel advised Plaintiff's counsel that she no longer represented Defendant.

[2] Ex. A to Pl. Answer to Mot. to Vacate Default Judgment.

[3] *See* Superior Court Civil Rule 132(a)(3)(ii) (stating that any party may serve and file written objections within ten days after the filing of a Commissioner's order).

undersigned judge entered an order affirming the Commissioner's award and sent copies of the order to both Plaintiff and Defendant. Defendant retained present counsel at some point prior to February 12, who then filed this motion to vacate default judgment on February 12. Plaintiff filed its opposition to the motion on February 15 and a hearing was held on February 20.

3. A motion to vacate a default judgment pursuant to Superior Court Civil Rule 60(b)(1) is addressed to the sound discretion of the trial court.[4] Although Rule 60(b) should be construed liberally, a party moving to vacate a default judgment still must satisfy three elements before a motion under that rule will be granted: "(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted."[5]

4. Therefore, this Court must first determine whether Defendant's failure to answer Plaintiff's complaint was due to excusable neglect. "Excusable neglect" has been defined as "that neglect which might have been the act of

[4] *Battaglia v. Wilmington Sav. Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977).

[5] *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at *1 (Del. Super.).

a reasonably prudent person under the circumstances."[6] In support of its motion, Defendant filed an affidavit of its president, Linyee Shum, Ph.D. His affidavit states that Defendant, a privately held company that provides bioanalytical support to pharmaceutical and biotech companies, has been experiencing severe financial difficulties over the past year.[7] Those difficulties have caused a reduction in Defendant's staff from fifteen to four employees and have consumed Dr. Shum's attention.[8] As a result, he alleges that when Defendant was served with the complaint he "did not understand the importance of a timely response" and "did not pay the matter the attention it deserved."[9] Furthermore, he states that when his secretary resigned in November 2006, Defendant's mail "simply piled up."[10] According to Dr. Shum, it was not until his wife came in to help with administrative tasks in late December that she opened the Commissioner's order dated December 28, and consequently urged him to seek counsel.[11]

5. Defendant has had notice of this complaint since it was properly served on July 14, 2006. In addition, Defendant was given notice of the default judgment hearing and the inquisition hearing. Nevertheless, it

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[6] *Battaglia*, 379 A.2d at 1135 n. 4.
[7] Linyee Shum, Ph.D. aff. at ¶ 2-3.
[8] *Id*. at ¶ 4-5.
[9] *Id*. at ¶ 6.
[10] *Id*. at ¶ 9.
[11] *Id*. at ¶ 9-10.

waited until over four months after the default judgment was entered and over two months after the inquisition hearing before getting involved in this case. These are hardly the acts of a reasonable person. "A Defendant cannot have the judgment vacated where it has simply ignored the process."[12]

6. Defendant has not met its burden for the first prong.[13] Because Defendant cannot satisfy the first of the three pronged burden under Rule 60(b)(1), the Court need not consider the second two prongs.[14] For the above reasons, Defendant's motion to vacate default judgment is **DENIED**.

IT IS SO ORDERED.

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oc: Prothonotary
cc: Timothy M. Holly, Esquire, Attorney for Plaintiff
Ryan P. Newell, Esquire, Attorney for Plaintiff
Kathleen F. McDonough, Esquire, Attorney for Defendant
Sarah E. DiLuzio, Esquire, Attorney for Defendant

[12] *See Cummings v. Jimmy's Grille, Inc.*, 2000 WL 1211167, at *3 (Del. Super.) (denying defendant's motion to reargue the Court's order which had denied defendant's motion to open a default judgment because defendant "got involved too late"). *See also Vechery v. McCabe*, 100 A.2d 460, 461 (Del. Super.) ("If the prayer of this petition were granted, this Court would be forced to open and vacate judgments upon any excuse a petitioner elected to advance, and the words 'excusable neglect' would cease to have meaning.").

[13] *See Apt. Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 72 (Del. 2004) (holding that the defendant did not produce enough evidence in support of its motion to vacate default judgment to meet its burden of proving excusable neglect).

[14] *Id*. (stating that a court should only consider the second two elements of the three pronged test "if a satisfactory explanation has been established for failing to answer the complaint, e.g. excusable neglect or inadvertence").