

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

GAMMANS ARCHITECTURAL d/b/a
Skylights International, Inc., and
GAMMANS ARCHITECTURAL
PRODUCTS, INC.,

Defendants.

CIVIL ACTION NO.
3:05-CV-097-CC

ORDER

This matter is currently before the Court on the Magistrate's Report and Recommendation [#5]. The Equal Employment Opportunity Commission ("EEOC" or "Plaintiff") filed the instant action against Defendants Gammans Architectural and Gammans Architectural Products, Inc. (collectively referred to herein as "Defendants") alleging unlawful employment practices on the basis of race in violation of Title VII. The respective Defendants answered, albeit without aid of counsel. Because corporations may not proceed pro se in federal court, however, see, e.g., Nat'l Indep. Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co., 748 F.2d 602, 609 (11th Cir 1985), the Court ordered Defendants to

retain counsel licensed to practice in this district and to notify the Court of the same within twenty days. The Court specifically advised Defendants that failure to do so “may result in the Court striking the respective Defendant’s Answer and default being entered against such Defendant.” (Order at 2, Dec. 7, 2005.)

As the record reflects, Defendants did not heed the Court’s instruction. Accordingly, on January 6, 2006, the Magistrate issued a Report and Recommendation in which she directed that the Clerk of Court strike the Answers to the Complaint and further recommended the following: (i) that default be entered against both Defendants; and (ii) that Plaintiff be given twenty (20) days to apply to the Clerk for entry of default judgment. On January 17, 2006, Nelson J. Gammans, the president of the corporate entity Defendants, responded to the Report and Recommendation and requested that he be allowed to represent the corporations pro se because the corporations purportedly cannot afford legal counsel. Mr. Gammans also gratuitously made substantive arguments about the case. On January 23, 2006, the EEOC filed a brief in opposition to the Defendants’ response to the Report and Recommendation. The EEOC requested that Mr. Gammans’ letter communication to the Court, which Mr. Gammans apparently submitted ex parte, be disregarded, that Defendants’ Answers be stricken, and that the Court order the entry of default against the Defendants.

On January 27, 2006, without awaiting a ruling from this Court on the Report and Recommendation, the EEOC filed a Motion for Entry of Default and Default Judgement. Based upon the affidavit of the EEOC's counsel, which was attached to the motion and showed that Defendants' Answers had been stricken and that Defendants otherwise had failed to defend, the Clerk entered default against the Defendants on January 30, 2006. The portion of the EEOC's motion seeking a default judgement remains pending.

Given the filings and events succeeding the Magistrate's issuance of the Report and Recommendation, the Magistrate's recommendations have now become moot. That is, the Clerk of Court has already entered default against both Defendants, and the EEOC had already moved the Court for a default judgement. For the purpose of clarifying this Court's position on the Report and Recommendation, however, the Court finds that the Report and Recommendation is due to be adopted in part and rejected in part. Insofar as Defendants were due to have default entered against them, the Court adopts that portion of the Magistrate's Report and Recommendation recommending that such action be taken. However, because it does not appear from the Complaint that the damages sought are "for a sum certain or for a sum which can by

computation be made certain . . . , ” Fed. R. Civ. P. 55(b)(1),¹ the Magistrate erred in recommending that Plaintiff be given twenty (20) days to apply to the Clerk for entry of default judgment. The Magistrate should have recommended that Plaintiff be given this time to apply to the Court for entry of default judgment pursuant to Fed. R. Civ. P. 55(b)(2), as Plaintiff has now done. Therefore, the Report and Recommendation is **ADOPTED in part** and **REJECTED in part**.

SO ORDERED, this 7th day of February, 2006.

s/ CLARENCE COOPER
CLARENCE COOPER
UNITED STATES DISTRICT JUDGE

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The EEOC’s Motion for Entry of Default and Default Judgement confirms that the damages being sought by the EEOC are not “for a sum certain or for a sum which can by computation be made certain.” Fed. R. Civ. P. 55(b)(1). Indeed, the motion indicates that in addition to injunctive relief and easily-calculable monetary damages such as back pay, the EEOC is seeking an unspecified amount of damages for the aggrieved workers for “emotional pain and suffering, anxiety, depression, loss of self-esteem, loss of enjoyment of life, inconvenience, stress and humiliation.” (See Pl.’s Mot. for Entry of Default and Default J. at 4.)