

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:00-CV-490

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U.S. DISTRICT COURT
W. DIST. OF N.C.

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
KNIFE AND FORK ON SHARON AMITY)
INC.,)
)
Defendant.)

ORDER

THIS MATTER comes before the Court upon Plaintiff's motion to reconsider, filed November 19, 2002.

The Court dismissed Plaintiff's complaint for failure to prosecute on November 4, 2002. The complaint in this case was filed by the EEOC on September 29, 2000. The Defendant never filed a responsive pleading. Therefore the EEOC moved for, and the clerk entered, default against Defendant under Fed. R. Civ. P. 55(a) on March 15, 2001. Between March 15, 2001 and November 4, 2002, the EEOC failed to take any action in the prosecution of its claims in this case, including failing to file a motion for a default judgment under Fed. R. Civ. P. 55(b).

The Court believes that dismissal was, and still is, the appropriate remedy for the Plaintiff's inexcusable neglect of this case. The degree of personal responsibility for the delay is absolute. *Herbert v. Saffell*, 877 F.3d 267, 270 (4th Cir. 1989). The EEOC simply allowed this case to fall through the cracks. The amount of prejudice to the defendant, to the extent that any defendant still exists, caused by the delay was great because such a significant time had passed since the alleged illegal conduct. *Id.* The EEOC had completely neglected to proceed with the

case until contacted by the Court requesting a status update. Therefore, Plaintiff has demonstrated a history of proceeding in a dilatory fashion. *Id.* Finally, as there has been no response from the Defendant to the complaint, dismissal is the only available, and the most appropriate, sanction. *Id.*

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's motion for new trial or relief from judgment is DENIED.

This, the 28 day of August, 2003.



GRAHAM C. MULLEN
CHIEF UNITED STATES DISTRICT JUDGE

clc

United States District Court
for the
Western District of North Carolina
August 11, 2003

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-00490

True and correct copies of the attached were mailed by the clerk to the following:

Bobby C. Simpson, Esq.
Equal Employment Opportunity Commission
129 W. Trade St.
Suite 400
Charlotte, NC 28202-2799

cc:

Judge	()
Magistrate Judge	()
U.S. Marshal	()
Probation	()
U.S. Attorney	()
Atty. for Deft.	()
Defendant	()
Warden	()
Bureau of Prisons	()
Court Reporter	()
Courtroom Deputy	()
Orig-Security	()
Bankruptcy Clerk's Ofc.	()
Other _____	()

Date: 8/11/03

Frank G. Johns, Clerk

By: Clay
Deputy Clerk