

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROBERT BROWN,	:	
Plaintiff,	:	Case No. 3:12cv00311
vs.	:	District Court Judge Walter Herbert Rice Chief Magistrate Judge Sharon L. Ovington
PERFECTION ASSOCIATES, LLC,	:	
Defendant.	:	

DECISION AND ORDER

Plaintiff Robert Brown brings this action against his former employer Defendant Perfection Associates, LLC. Brown claims that Perfection Associates terminated his employment in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, *et seq.*, and in violation of Ohio's statutory law against handicap discrimination in employment, Ohio Revised Code §§ 4112.02 and 4112.99. The case is before this Court on a Perfection Associates' Motion to Deem Admitted the Requests for Admission Issued to Plaintiff (Doc. #7), Brown's Response (Doc. #10), and the record as a whole.

Perfection Associates served its first set of Requests For Admission to Brown on January 18, 2013. Perfection Associates' responses were due within 30 days. *See* Fed. R. Civ. P. 36(a)(3). On January 31, 2013, Brown's counsel advised Perfection Associates' counsel by email that additional time was needed to respond to the Requests For Admission. Brown acknowledges that Perfection Associates was initially "very

understanding” and agreed to provide Brown an extension of time to respond, setting the response deadline of March 1, 2013. (Doc. #10, PageId at 53).

March 1, 2013 came and went, but Brown did not provide Perfection Associates with his responses to its Requests For Admission. Nearly two weeks later, Perfection Associates’ counsel emailed Brown’s counsel, seeking discovery responses by March 20, 2013. Brown’s counsel immediately responded to the email, explaining that Brown’s “son has been in the hospital for some time” and that Brown was scheduled to assist with responses to the discovery requests during the week of March 18, 2013. *Id.*, PageID at 58.

Brown and his counsel met on March 20, 2013. Two days later, Brown’s counsel provided Perfection Associates with Brown’s responses to the Requests For Admission. On that same day, March 22, 2013, Perfection Associates filed its presently pending Motion To Deem Requests Admitted.

Because Perfection Associates did not Reply to Brown’s Response to the Motion To Deem Requests Admitted, there is no present dispute in the record over the fact that Perfection Associates now possesses Brown’s responses to Perfection Associates’ Requests For Admission. In addition, there is no dispute that Brown’s delay in providing his Responses was due to a significant, if not serious, family health problem.

Rule 36 permits the parties to stipulate to an extension time to respond to Requests for Admission as long as the extension comports with Fed. R. Civ. P. 29. *See* Fed. R. Civ. P. 36(a)(3). Here, the parties’ first stipulation comported with Rule 29. It would have clarified and improved the parties’ situation had Brown’s counsel contacted Perfection

Associates' counsel near the parties' stipulated deadline, March 1, 2013. Yet, Brown's counsel corrected this misstep in a reasonable manner under the circumstances then existing, especially his client's unavailability due to a significant, if not serious, family medical problem. In addition, counsels' emails – to their credit – informally and eventually resolved Brown's non-compliance with the March 1, 2013 deadline consistent with procedures mandated in S.D. Ohio Civ. R. 37.1

Perfection Associates' Motion raises one remaining issue: whether it is entitled to an Order deeming its Requests for Admission admitted under Rule 36(a)(3). No, for several reasons. First, the parties' initial stipulation was permitted by Rule 36(a)(3) and Fed. R. Civ. P. 29. Second, the record and circumstances described above reveal conduct that overall was in done in good faith and without intentionally dilatory or other bad-faith tactics. Third, because Brown has provided his responses to Perfection Associates, the record reveals that no prejudice has befallen Perfection Associates' ability to defend against Brown's allegations and claims.

IT IS THEREFORE ORDERED THAT:

Defendant Perfection Associates' Motion to Deem Admitted the Requests for Admission (Doc. #7) is DENIED.

August 6, 2013

s/Sharon L. Ovington
Sharon L. Ovington
Chief United States Magistrate Judge