

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

SIDNEY J. PHILLIPPY derivatively on  
behalf of ANB BANCSHARES, INC. and  
its wholly owned subsidiary ANB  
FINANCIAL NATIONAL ASSOCIATION  
PLAINTIFF

v. Case No. 08-5230

ERIC BROWN, HARRY BROWN, DAN  
DYKEMA, BLAKE EVANS and VICTOR EVANS  
INDIVIDUAL DEFENDANTS

and

ANB BANCSHARES, INC. and  
THE FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver of  
ANB FINANCIAL NATIONAL ASSOCIATION  
NOMINAL DEFENDANTS

**ORDER**

Now before the Court is Defendants' Motion to Dismiss (Doc. 3). Plaintiff initially filed a verified shareholder derivative complaint in the Circuit Court of Washington County, Arkansas on July 8, 2008. On May 9, 2008, the FDIC was appointed as Receiver of ANB, and on October 24, 2008, the FDIC was substituted for ANB. On September 11, 2008, Defendants filed a motion to dismiss on the grounds that Plaintiff lacks standing to bring this suit. Plaintiff did not file a response, and Defendants removed the case to this Court on October 29, 2008.

On October 29, 2008, the Honorable Jimm Larry Hendren ordered Plaintiff to respond to the motion to dismiss within ten days. Plaintiff did not file a response, and this case was reassigned to the undersigned on November 13, 2008. As of this

date, Plaintiff has failed to respond to the motion to dismiss or to otherwise communicate with the Court that he intends to proceed with this action. Accordingly, Defendants' Motion (Doc. 3) is GRANTED, and Plaintiff's case is DISMISSED WITHOUT PREJUDICE on the grounds that he has failed to prosecute it and has failed to comply with Court orders. See Fed. R. Civ. P. 41(b). Should Plaintiff re-file this action, Defendants may petition the Court to require the Plaintiff to show good and adequate cause for his failure to prosecute the instant action before he is allowed to proceed with a second action.

IT IS SO ORDERED this 18th day of December 2008.

/s/ Robert T. Dawson  
Honorable Robert T. Dawson  
United States District Judge