

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 10-cv-02810-PAB-BNB

OILMAN INTERNATIONAL, FZCO,

Plaintiff,

v.

MARVIN BRUCE NEER d/b/a Tree Machines, and
JESUSA S. NEER a/k/a Jesusa S. Bartolome,

Defendants.

ORDER

This matter arises on my Order to Show Cause [Doc. # 36, filed 2/4/2011] requiring the defendants to show cause why default should not enter against them for, among other things, failing to attend the scheduling conference on February 24, 2011. Good cause having been shown, the Order to Show Cause is DISCHARGED.

By an Order [Doc. # 18, filed 12/15/2010] the parties were required to confer pursuant to Fed. R. Civ. P. 26(f) on or before January 3, 2011; to make their Rule 26(a)(1) disclosures on or before January 18, 2011; and to attend a scheduling/planning conference pursuant to Fed. R. Civ. P. 16(b) on January 24, 2011, at 10:00 a.m. The Scheduling Conference was reset to January 27, 2011, at 2:00 p.m., Minute Order [Doc. # 22, filed 12/27/2010], and was reset again to February 4, 2011, at 9:30 a.m. Minute Order [Doc. # 33, filed 1/27/2011]. Defendant Marvin Bruce Neer was granted leave to appear at the scheduling conference by telephone, Order [Doc. # 28, filed 1/6/2011], and was instructed to contact the court by telephone at the date and time of the scheduling conference. Id. at p. 2. Plaintiff's counsel appeared at the scheduling conference

as ordered, but the defendants, who are proceeding *pro se*, neither appeared nor contacted the court by telephone.

Defendant Jesusa Neer, whose address is in Brighton, Colorado, responded to the Order to Show Cause stating:

I am the only one who is managing my household and always try to do my best to stay on top of things but circumstances do happen beyond my control. My son checks our daily mail and inadvertently left the Scheduling Conference letter from the United States District Court for the District of Colorado in our car garage. I didn't find the letter until February 6th. In which by that time, already missed the reset schedule of February 4, 2011.

Response [Doc. # 42, filed 2/14/2011] at ¶3.

Suspiciously, defendant Marvin Bruce Neer, whose address has been in Phoenix, Arizona, since February 7, 2011, see Notice of Change of Address [Doc. # 39, filed 2/9/2011], offers the same excuse:

I Marvin Neer did not receive notice to appear in court on Feb 4th 2011 at 9:30 AM due to my children placing the mail in the garage instead of in the house where we would see it.

Response [Doc. # 45, filed 2/15/2011].

I am left to wonder if children in two households committed the same error of leaving my order in the garage, or if Mr. Neer is actually residing with his wife and children in Brighton, in which case he has failed to keep the court informed of his current address. This issue notwithstanding, I find that good cause exists to discharge the order to show cause and to have the case proceed on its merits. The Neers are cautioned, however, that I have entered a Scheduling Order [Doc. # 37], and that they are required to comply with the Scheduling Order, all other orders of the court, and all applicable rules. Their failure to comply may result in the

imposition of sanctions.

IT IS ORDERED that the Order to Show Cause [Doc. # 36] is DISCHARGED.

Dated February 17, 2011.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge