

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH E. RANDOLPH,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 15-246 (MN)
)	
DAVID HENDERSON, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington this 12th day of December 2019;

1. On November 5, 2019, the Court entered an Order for Plaintiff to show cause, on or before December 6, 2019, why this case should not be dismissed for failure to prosecute, pursuant to Rule 41.1 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware. (*See* D.I. 75). Plaintiff did not respond to the Show Cause Order.

2. Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, a court may dismiss an action “[f]or failure of the plaintiff to prosecute or to comply with [the Federal Rules] or any order of court” Although dismissal is an extreme sanction that should only be used in limited circumstances, dismissal is appropriate if a party fails to prosecute the action. *Harris v. City of Philadelphia*, 47 F.3d 1311, 1330 (3d Cir. 1995).

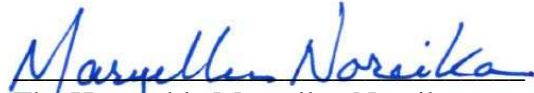
3. The following six factors determine whether dismissal is warranted: (1) The extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of other sanctions; and (6) the meritoriousness of the claim or

defense. *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984); *see also Hildebrand v. Allegheny Cty.*, 923 F.3d 128 (3d Cir. 2019). The court must balance the factors and need not find that all of them weigh against Plaintiff to dismiss the action. *Emerson v. Thiel Coll.*, 296 F.3d 184, 190 (3d Cir. 2002).

4. Several factors warrant the sanction of dismissal including Plaintiff's failure to participate in the joint status report filed by Defendants or to file a separate status report as ordered by the Court on August 13, 2019 (D.I. 73); Plaintiff's failure to respond to the Show Cause Order (D.I. 75), and Plaintiff's apparent abandonment of the case.

THEREFORE, IT IS HEREBY ORDERED that:

1. The stay is **LIFTED**.
2. The Complaint is **DISMISSED** without prejudice for Plaintiff's failure to prosecute this case.
3. The Clerk of Court is directed to **CLOSE** the case.


The Honorable Maryellen Noreika
United States District Judge