

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MICHAEL S. SCHIELE,

Plaintiff,

v.

CASE NO: 8:16-cv-2308-T-30MAP

SOUTHEAST SHOWCLUBS, LLC,
EMPEROR'S TAMPA, II, INC., and
MICHAEL TOMKOVICH,

Defendants.

ORDER

THIS CAUSE comes before the Court upon Plaintiff's Motion for Sanctions against Defendant Michael Tomkovich for Failing to Attend Court-Ordered Mediation (Dkt. 33). Tomkovich failed to file a response to Plaintiff's Motion by the deadline. Upon review of the Motion, and being otherwise advised in the premises, the Court concludes that the parties shall attend another mediation and monetary sanctions should be entered against Tomkovich.

Background

The Court ordered the parties to mediate this case (Dkt. 25) and allowed them to do so on August 16, 2017. The Corporate Defendants, Southeast Showclubs, LLC, and Emperor's Tampa, II, Inc., attended the mediation through their corporate representatives. Tomkovich, an individual Defendant, did not attend. According to Plaintiff, no reason was provided to Plaintiff's counsel other than that he had an emergency. According to Plaintiff,

Plaintiff's counsel would have readily agreed to re-schedule the mediation had Tomkovich requested that the mediation be re-scheduled and moved the Court for permission citing to whatever emergency was preventing his appearance. Plaintiff argues that Tomkovich is in violation of this Court's mediation order and should be sanctioned as a result.

Discussion

Local Rule 9.05(c) states:

Party Attendance Required: *Unless otherwise excused by the presiding judge in writing, all parties, corporate representatives, and any other required claims professionals (insurance adjusters, etc.) shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.*

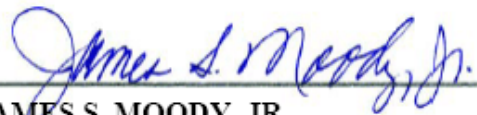
M.D. Fla. Local Rule 9.05(c) (emphasis added).

Tomkovich failed to attend the Court-ordered mediation and failed to seek an extension of the deadline. By failing to respond to the instant motion, Tomkovich has also not explained why sanctions should not be entered against him. Under these circumstances, sanctions are appropriate to the extent that the parties shall mediate this matter again, with all parties present, and Tomkovich shall pay the cost of that mediation. Tomkovich shall also pay Plaintiff's attorney's fees associated with Plaintiff's attorney's attendance at the first mediation (\$300 per hour for approximately 3 hours) and the time he spent drafting the motion for sanctions (\$300 per hour for 1 hour). The Court admonishes Tomkovich that any further violations of this Court's orders and the Local Rules may subject him to additional sanctions.

It is therefore ORDERED AND ADJUDGED that:

1. The Motion for Sanctions against Defendant Michael Tomkovich for Failing to Attend Court-Ordered Mediation (Dkt. 33) is granted as discussed herein.
2. The parties shall coordinate another mediation date and Tomkovich is responsible for filing a Notice containing the mediation details within fourteen (14) days of this Order.
3. As explained in the Local Rules, all parties shall attend mediation.
4. Tomkovich shall pay the full cost of the mediation.
5. Tomkovich shall pay \$1,200 in attorney's fees to Plaintiff for the time Plaintiff's counsel spent attending the first mediation and the time he spent drafting the Motion for Sanctions.

DONE and **ORDERED** in Tampa, Florida on September 1, 2017.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record