

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-22388-CIV-O'SULLIVAN

[CONSENT]

EDILBERTO HERNANDEZ,
and other similarly situated,
Plaintiff,

v.

H.O.N. CONSTRUCTION COMPANY,
INC., et al.,
Defendants.

ORDER

THIS MATTER is before the Court on Plaintiffs' Motion for Default of Individual Defendant as to Liability (DE# 45, 2/17/09). The Court has reviewed the applicable filings and the law.

BACKGROUND

On December 10, 2008, the Court issued an Order (DE# 41) requiring the individual defendant to "file a notice with the Court indicating the proper address for service of all future pleadings in this matter on or before December 30, 2008." See Order (DE# 41, 12/10/08). The Order further warned the individual defendant that "[t]he failure to comply with this order may result in a default against defendant Denis A. Lopez." Id. Defendant Lopez failed to file the requisite notice.

On January 5, 2009, the undersigned issued a second Order (DE # 42) requiring the individual defendant, Denis A. Lopez, to "comply with the December 10, 2008 Order requiring him to file a notice with the Court indicating the proper address for service of

all future pleadings in this matter on or before Tuesday, January 20, 2009.” See Order (DE# 42, 1/5/09) (emphasis omitted). In this Order (DE# 42), the Court warned the individual defendant that “[t]he failure to comply with this Order will result in a default against defendant Denis A. Lopez.” The Court’s Order (DE# 42) required the defendants’ former counsel, H. Jeffrey Cutler, to provide a copy of the Order to the defendants. Mr. Cutler filed a Notice of Compliance with Order Dated December 10, 2008 (DE# 43, 1/23/09) indicating that he served a copy of the Court’s December 10, 2008 Order (DE# 41) on his former clients and providing the Court with the address where service was made. See Notice of Compliance with Order Dated December 10, 2008 (DE# 43, 1/23/09). Mr. Cutler’s Notice (DE# 43) did not state whether he provided his former clients with a copy of the Court’s January 5, 2009 Order (DE # 42) . As such, the Court provided the individual defendant, Denis A. Lopez, with an additional opportunity to comply with the Court’s Orders by February 16, 2009. See Order (DE# 44, 1/27/09). The Court mailed a copy of this Order (DE# 44) to the mailing address provided by Mr. Lopez’s former counsel. To date, Mr. Lopez has failed to comply with the Court’s multiple orders and a default against Mr. Lopez is warranted.

ANALYSIS

“It is well established that the district court has the authority to . . . enter default judgment . . . for failure to . . . comply with its orders.” See Flaska v. Little River Marine Construction Co., Inc., 389 F.2d 885, 887 (5th Cir. 1968),¹ cert. den. 88 S.Ct. 2287, 392

The Eleventh Circuit in Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

U.S. 928 (1968) (citations omitted).

This Court finds, the individual defendant had notice of this Court's Order (DE # 41) dated December 10, 2008 requiring the individual defendant to file a notice indicating the proper address for service.

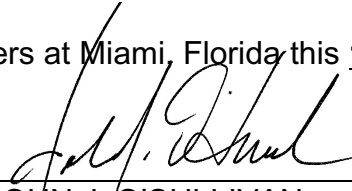
This Court also finds that the defendant had notice of this Court's Order (DE# 44, 1/27/09), requiring the individual defendant to file the requisite notice by February 16, 2009. Based on the individual defendant's continued disregard for the Court's Orders, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion for Default of Individual Defendant as to Liability (DE# 45, 2/17/09) is **GRANTED**. A DEFAULT is entered in favor of the plaintiff and against defendant Denis A. Lopez. It is further

ORDERED AND ADJUDGED that the trial set for April 20, 2009 and all other hearing dates and deadlines are cancelled. It is further

ORDERED AND ADJUDGED that by **Friday, March 20, 2009**, the plaintiff shall move for final default judgment against all defendants. The motion shall be supported by affidavit.

DONE AND ORDERED in Chambers at Miami, Florida this **18th** day of February, 2009.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
All Counsel of Record

Copies mailed by Chambers to:
Denis A. Lopez
16186 SW 86th Terrace
Miami, FL 33193