

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAINTERS DISTRICT COUNCIL NO. 14,)		
a labor organization,)		
)	No. 08-C-4984
Plaintiffs,)		
)	Judge James B. Moran
v.)		
)	Magistrate Judge Keys
DESTINY DECORATORS, INC., an)		
Illinois corporation,)		
)	
Defendants.)		

PLAINTIFF’S MOTION FOR DEFAULT AND JUDGMENT IN SUM CERTAIN

Plaintiff, Painters District Council No. 14, by one of its attorneys, DONALD D. SCHWARTZ, JAMES R. ANDERSON, ANTHONY B. SANDERS and ARNOLD AND KADJAN, pursuant to F.R.C.P. 55, respectfully request this Honorable Court to enter an Order of Default and Judgment in Sum Certain in favor of Plaintiff and against Defendant, DESTINY DECORATORS, INC., an Illinois corporation.

In support thereof, Plaintiff states:

1. This case was filed on September 2, 2008.
2. Despite repeated attempts by Plaintiff’s process server, Plaintiff was unable to personally serve Defendant. *See* Exhibit A, Affidavit of Brian Riebel. After seven (7) attempts to so serve the Registered Agent of Defendant, Plaintiff served Defendant through the Illinois Secretary of State on October 25, 2008. *See* Exhibit B, Affidavit of Compliance for Service on Secretary of State under the Business Corporation Act. Thereafter, Plaintiff served Defendant at its last known address, and the address believed to be where its Registered Agent resides, via certified and regular mail. *See* Exhibit C, Certificate of Service.

3. In excess of 20 days have expired since Service of Process, however, Defendant has failed to file an answer or otherwise plead.

4. On January 16, 2008, Plaintiff brought charges against the Defendant before District Council No. 14's Joint Trade Board, convened pursuant to notice. *See* Exhibit D, Notice of Hearing, Certificate of Service, and signed Certified Mail Receipts.

5. On May 15, 2008, the Joint Trade Board entered an award in favor of Plaintiff and against the Defendant. *See* Exhibit E, Affidavit of Secretary of Joint Trade Board and attached Award. Under the Award, if payment in full was not received by June 30, 2008, the amount of the Award increased to \$49,400.00. *Id.* No payment of any kind by the Defendant has been made. *Id.*

6. Defendant and its attorney for the Joint Trade Board hearing were served with copies of the Award via certified mail on May 23, 2008, and May 28, 2008, respectively. *See* Exhibit F, Certified Mail Receipts.

7. September 2, 2008 is more than 90 days after May 28, 2008.

8. The limitations period for moving to vacate an arbitration award in this judicial district is ninety (90) days after service of the Award. *Sullivan v. Lemoncello*, 36 F.3d 676, 681-82 (7th Cir. 1996).

9. A review of this Court's docket does not show any complaints filed by Defendant to vacate the arbitration award.

10. No action was taken by the Defendant to move to set aside the Decision and Award within ninety days, and the time to do so has long since passed.

11. Under the Collective Bargaining Agreement to which Defendant is bound (*see* Exhibit G, Article XVI(2)(c)), and per the terms of the Award itself (Exhibit I of Exhibit E, page

14 (“In accordance with Article XVI, Section 2(c) of the parties collective bargaining agreement, the employer is required to pay all attorneys’ fees and costs incurred in prosecuting this proceeding, including any proceedings to enforce this Award.”)), Defendant is liable to Plaintiff for its attorneys fees and costs.

12. Plaintiff’s attorneys fees and costs for the prosecution before the Joint Trade Board, and the present action before this Court, amount to \$19,773.94. *See* Exhibit H, Affidavit of Anthony Sanders.

WHEREFORE, Plaintiff prays that this Court grant the following relief:

A. Find Defendant Destiny Decorators, Inc. in default and enter final judgment in favor of Plaintiff, Painters District Council No. 14, and against Destiny Decorators, Inc. in the amount of \$49,400.00 as ordered by the Award of the Joint Trade Board and \$19,773.94 in attorneys fees and costs, for a total of \$69,173.94.

B. Grant Plaintiff such other and further relief as it may deem appropriate under the circumstances.

Respectfully submitted,

PAINTERS DISTRICT COUNCIL NO. 14,

By: s/ Anthony B. Sanders
One of their Attorneys

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