

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

**HIH, LLC, d/b/a CITY FOOD AND
LIQUOR,**

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant

No. C14-2029

ORDER

This matter comes before the Court on the Motion of Plaintiff's Counsel to Withdraw (docket number 14) filed by attorney Christopher S. Wendland on December 16, 2014, and the Motion to Dismiss (docket number 15) filed by the United States on December 30.

On May 9, 2014, Plaintiff HIH, LLC, d/b/a City Food and Liquor, filed a Petition for Judicial Review in the Iowa District Court for Black Hawk County. Plaintiff asked the Court to set aside an April 9, 2014 decision of the United States Department of Agriculture, permanently disqualifying Plaintiff from participating as an authorized retailer in the Supplemental Nutrition Assistance Program. The action was removed to this court on May 28, and the United States filed an answer on July 21.

On August 19, 2014, the Court adopted a proposed Scheduling Order and Discovery Plan submitted by the parties. Also at that time, the case was referred to me for the conduct of all further proceedings and the entry of judgment, in accordance with 28 U.S.C. § 636(c) and the consent of the parties. After consulting with the attorneys, the matter was set for a nonjury trial on August 10, 2015.

On December 16, 2014, Mr. Wendland filed the instant motion, asking that he be permitted to withdraw as counsel for Plaintiff. According to the motion, Plaintiff's representative (Ijaz Haq) has failed to cooperate with counsel in obtaining responses to Defendant's discovery requests. A copy of the motion was mailed by Mr. Wendland to Plaintiff on December 16, with attention to Ijaz Haq. Plaintiff has not filed any response to counsel's request to withdraw.

On December 30, 2014, the United States filed a response to Mr. Wendland's motion to withdraw, stating that it does not oppose the motion. The United States also notes, however, that "a corporation may appear in federal courts only through licensed counsel." *Rowland v. California Men's Colony*, 506 U.S. 194, 202 (1993). *See also United States ex rel Mergent Servs. v. Flaherty*, 540 F.3d 89, 92 (2d Cir. 2008). Accordingly, if Mr. Wendland is permitted to withdraw, another attorney must appear on Plaintiff's behalf, or it will be in default.

Also on December 30, the United States filed the instant motion to dismiss. In support of its motion, Defendant cites FEDERAL RULE OF CIVIL PROCEDURE 41(b), which authorizes the Court to involuntarily dismiss an action "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order." The United States argued that "HIH's willful disregard of the discovery deadlines should not be tolerated, and this case should be dismissed with prejudice."¹ The Court concludes that it is way too early to consider the drastic remedy of dismissal for Plaintiff's discovery violations. Defendant has yet to even file a motion to compel discovery under FEDERAL RULE OF CIVIL PROCEDURE 37.

Accordingly, the Court finds that Mr. Wendland's motion to withdraw should be granted, and the Defendant's motion to dismiss should be denied without prejudice. Plaintiff will be given 14 days in which to retain counsel to appear on its behalf. If an

¹ Defendant's Brief (docket number 15-1) at 4.

attorney has not appeared for Plaintiff by the deadline, then Plaintiff will be considered in default.

ORDER

IT IS THEREFORE ORDERED as follows:

1. The Motion to Withdraw (docket number 14) filed by Plaintiff's counsel is **GRANTED**. The appearance of attorney Christopher S. Wendland on behalf of Plaintiff is hereby deemed **WITHDRAWN**.

2. Plaintiff must obtain an attorney to appear on its behalf not later than **January 15, 2015**. If an attorney has not appeared on Plaintiff's behalf by the deadline, then Plaintiff will be considered to be in default.

3. The Motion to Dismiss (docket number 15) filed by the United States is **DENIED** without prejudice.

DATED this 31st day of December, 2014.



JON STUART SCOLES
CHIEF MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA