

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MELISA STEWART, Individually;

Plaintiff,

vs.

PRECISE PROPERTIES, LLC,
HAROLD'S KOFFEE HOUSE, INC., AND
JOHN DOES 1 - 2 INCLUSIVE,

Defendants.

8:15CV376

ORDER

On October 13, 2016, Defendants filed a motion to compel, explaining:

On August 3, 2016, Defendants served Defendants' First Set of Interrogatories, Defendants' First Set of Requests for Production of Documents, and Defendants' First Set of Requests for Admissions on Plaintiff. Plaintiff has failed to respond to these discovery requests and completely ignored Defendants' counsel's attempts by telephone and email to personally confer to resolve Plaintiff's failure to respond.

(Filing No. 38). Plaintiff did not respond to the motion, but apparently did respond to the underlying discovery requests. (Filing No. 40).

Defendants' motion to compel also requested sanctions. The court ordered Plaintiff to file a response to the motion for sanctions by November 15, 2016. (Filing No. 41). Plaintiff did not file a response.

Plaintiff's failure to timely respond to Defendants' discovery was not substantially justified and as a result, Defendants were required to file a motion to compel. Plaintiff never responded to the motion to compel, even after the court extended the deadline for responding to Defendants' request for sanctions. Under the circumstances, Plaintiff will be ordered to pay the attorney fees and costs incurred by Defendants in filing the motion to compel.

Accordingly,

IT IS ORDERED:

- 1) Defendants' motion to compel and for sanctions, (Filing No. 38), is granted.
- 2) Defendants' request for an award of attorney fees and costs is granted, and
 - a. On or before December 2, 2016, Defendants' counsel shall serve counsel with an itemization of fees and costs incurred in filing the motion to compel.
 - b. Plaintiff's counsel shall respond to this itemization within ten days thereafter.
 - c. If the parties agree as to the amount to be awarded, on or before December 16, 2016, they shall file a joint stipulation for entry of an order awarding costs and fees to Defendants.
 - d. If the parties do not agree on the attorney fees and costs to be awarded, or if Plaintiff does not timely respond to the Defendants' itemization and demand, Defendants shall file a motion for assessment of attorney fees and costs by no later than January 9, 2017. This motion shall be submitted in accordance with the court's fee application guidelines outlined in Nebraska Civil Rules 54.3 and 54.4, but a supporting brief is not required.

November 19, 2016.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge