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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARILYN LANEY,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Case No. 3:13-cv-00140-MMD-WGC

ORDER

(Def.'s Motion to Vacate Judgment and to
Quash Writ of Execution – dkt. no. 6)

Defendant United States Postal Service (“USPS”) filed a Motion on April 19, 2013, seeking to vacate the judgment entered against it in Elko Justice Court pursuant to Fed. R. Civ. P. 7(b), and to quash the writ of execution in furtherance of the judgment. On May 7, 2013, USPS filed a Notice of Failure to Respond to Motion. (Dkt. no. 8.) Plaintiff Marilyn Laney has yet to respond to the Motion.

The Elko Justice Court did not have jurisdiction to enter a judgment against USPS. A contract claim subject to the Contract Disputes Act of 1978 must first be submitted to the contracting officer for a decision. 41 U.S.C. § 7103. Only once there has been a final decision on the claim can the claimant appeal the decision to either the United States Court of Federal Claims or before an agency board of contract appeals. 41 U.S.C. § 7104(a), (b)(1); *id.* at § 7105(d). A state court therefore lacks jurisdiction to enter a judgment against the United States in a contract dispute. In this case, Plaintiff failed to exhaust administrative remedies and pursued the claim in a forum that lacked jurisdiction to hear it.

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In any event, Plaintiff's failure to file points and authorities in opposition to a motion constitutes consent that the motion be granted. Local Rule 7-2(d); see *Abbott v. United Venture Capital, Inc.*, 718 F. Supp. 828, 831 (D. Nev. 1989).

Accordingly, IT IS THEREFORE ORDERED that Defendant's unopposed Motion to Vacate Judgment and to Quash Writ of Execution (dkt. no. 6) is GRANTED.

It is FURTHER ORDERED that the judgment entered by Elko Justice Court against Defendant United States Postal Service is VACATED.

It is FURTHER ORDERED that the writ of execution issued in furtherance of the judgment is QUASHED.

DATED THIS 18th day of July 2013.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE