

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AMTRUST BANK,

09CV3234 (CBA) (ALC)

Plaintiff,

ORDER GRANTING
MOTIONS TO COMPEL

v.

MICHAEL HODGE, et al.,

Defendants.

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CARTER, United States Magistrate Judge:

In this mortgage fraud action, plaintiff Federal Deposit Insurance Corporation as receiver for AmTrust Bank (“Plaintiff”) propounded its Second Set of Requests for the Production of Documents and Second Set of Interrogatories on defendant George R. Alderdice (“Alderdice”) on June 23, 2010. Having received no response, Plaintiff made several attempts to communicate with counsel for Alderdice by both telephone and e-mail in furtherance of agreeing on a date for Alderdice’s production without need for intervention by the Court. On September 13, 2010, counsel for Alderdice informed Plaintiff that he would be withdrawing from the action, and that Alderdice, an attorney duly licensed to practice law in the State of New York, would be proceeding on a pro se basis.¹

Alderdice has effectively disappeared since relieving his attorney of record. On November 16, 2010, at a conference at which he failed to appear, I was informed that his former counsel was unable to reach him despite several attempts. Sua sponte, I granted Alderdice

¹ On October 4, 2010, Alderdice wrote a letter to his former counsel (thereafter filed with the Court) advising of his intent to proceed pro se and also filed with this Court a Consent to Change Attorneys. (Docket No. 143.) This letter made no mention of the outstanding discovery or of Plaintiff’s motion to compel, which by then had been filed.

additional time (until December 31, 2010) and ordered him to respond to Plaintiff's outstanding motion, notice of which he received via the Court's Electronic Case Filing System ("ECF"). Two subsequent letters, dated January 1, 2011 and January 28, 2011, from Plaintiff's counsel indicated that Alderdice still had not responded to the discovery requests. (Docket Nos. 146-147.)

A second motion to compel was filed against Alderdice on February 22, 2011, this time by co-defendant Morningstar Abstract, LLC ("Morningstar"). (Docket No. 148.) No response followed by Alderdice, who remained truant throughout the subsequent February 24, 2011 and April 6, 2011 conferences, and since then he has failed to appear. At the February 24 conference, William Joseph Smith ("Smith"), former counsel for Alderdice intimated that an undisclosed medical and/or psychological condition may be preventing Alderdice's furtherance of the action and payment of outstanding bills to Smith. In addition to counsel's fruitless attempts, I personally made attempts, including contacting the address and telephone number Alderdice has listed as his business address in his October 25, 2010 letter; the address registered with the Appellate Division of the Second Department; and internet searches for both his places of business and residence. All led to telephone numbers that are out-of-service. On April 6, 2011, I mailed a copy of the docket and Plaintiff's motion to compel to an address in Manhasset, New York, which, while owned by an individual named Robert Alderdice, appears to be inhabited by Defendant Alderdice as well. No response followed.

CONCLUSION

Alderdice's filing of a notice of appearance means that he has personally received copies of all filings in this action via ECF since October 25, 2010, yet has made no effort to respond,

even with the bare minimum of an explanation of why he is unable to further discovery. For the foregoing reasons, Plaintiff's motion to compel is GRANTED; Morningstar's motion to compel is GRANTED; and Plaintiff shall file a motion for default judgment against Defendant Alderdice within thirty days of the entry of this order.

SO ORDERED.

DATED: May 6, 2010
Brooklyn, New York

_____/s/_____
Andrew L. Carter, USMJ