

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH WOODSON,

Plaintiff,

DECISION AND ORDER

10-CV-6263L

v.

LORAM MAINTENANCE OF WAY, INC.,

Defendant.

On May 13, 2010, plaintiff Joseph Woodson (“plaintiff”) commenced this action against defendant Loram Maintenance of Way, Inc. (“defendant”), alleging race-based discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and the New York Human Rights Law, N.Y. Exec. Law §290 et seq. (Dkt. #1). Defendant was served with process via certified mail at its Minnesota facility on or about January 26, 2011 (Dkt. #8, #9), but failed to appear, answer or otherwise move against the complaint. At the request of plaintiff, entry of default was granted by the Clerk on April 21, 2011 (Dkt. #11). Thereafter, on June 8, 2011 (Dkt. #12), plaintiff moved for default judgment against defendant. That motion is now pending.

The Court has received a letter dated June 23, 2011, from an attorney purporting to represent the defendant. In that letter, counsel asserts that plaintiff’s employment agreement limits plaintiff to arbitration concerning any employment disputes and counsel urges plaintiff to dismiss this action and proceed in arbitration.

Counsel also seeks an opportunity to move to vacate the entry of default and to respond to plaintiff’s pending motion for default judgment.

I direct the Clerk to file defendant's counsel's referenced letter and I treat it as a motion for leave to move (1) to vacate the entry of default and (2) to respond to plaintiff's motion for default judgment. Leave is hereby granted and defendant is given thirty (30) days from entry of this order to enter an appearance in this action and move relative to the entry of default and plaintiff's motion for default judgment. Reply papers by plaintiff, if any, must be filed within fifteen (15) days after the filing of defendant's papers.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
June 30, 2011.