

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DANIEL H. ROBERTS,
(former TDCJ-CID #01681098)

Petitioner,

vs.

WILLIAM STEPHENS,

Respondent.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION H-13-1939

MEMORANDUM AND OPINION

On December 2, 2013, the petitioner, Daniel H. Roberts, advised the court of his new address at 5502 Van Zandt, Houston, Texas 77016. (Docket Entry No. 18). The respondent, William Stephens, filed a motion for summary judgment on December 23, 2013. (Docket Entry No. 20). The certificate of service attached to the motion states that a copy was sent to Roberts’s most recent address, 5502 Van Zandt. (Docket Entry No. 20, p. 27). Roberts did not respond.

Roberts’s failure to respond violates this court’s July 24, 2013 order. That Order required Roberts to file a response to a motion for summary judgment within 30 days after it was filed. (Docket Entry No. 4). The court’s July 24, 2013 order specifically stated that “failure to file a response within thirty days may result in the dismissal of this action for want of prosecution. Rule 41(b), FED. R. CIV. P.”

Roberts’s failure to respond to the motion or comply with the court’s order shows a lack of diligence. Dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1417 (5th Cir. 1995); 8 J. MOORE, FEDERAL PRACTICE § 41.51(3)(b) & (e) (3d ed. 2002). On a proper showing, relief from this order may be granted under FED. R. CIV.

P. 60(b). The summary judgment motion, (Docket Entry No. 20), is denied without prejudice as moot. If the case is reinstated, the motion will be reinstated as well.

SIGNED on January 28, 2014, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
United States District Judge