

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 2631

MATTRESS NOW, INC.,)
Plaintiff)
)
v.)
)
MARIE VICKERS, et al,)
Defendants)

ORDER GRANTING SANCTIONS FOR
FAILURE TO ATTEND MEDIATION

THIS MATTER is before the undersigned, Judge Presiding, upon motion by Plaintiff Mattress Now, Inc. (“Mattress Now”) for an order imposing sanctions (the “Motion”) upon Defendant Marie Vickers (“Vickers”) for failure to attend a Mediated Settlement Conference (“Mediation”) scheduled relative to this matter pursuant to Rule 19 of the Business Court Rules (“BCR”) and Rule 5 of the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions (“Mediation Rules”); and

THE COURT, having considered the Motion, its attachments and relevant matters of record, FINDS that:

1. Mattress Now filed the Motion on August 18, 2009, and duly served it on Vickers by electronic notification through the North Carolina Business Court electronic mail notification service.
2. Vickers has not responded to the sanctions motion, and the time for such response has expired.
3. The parties and Mediator David Brown (“Mediator”) properly scheduled a Mediation in this matter for July 14, 2009. Proper notice was provided to all parties, including Vickers, of the time and place of the Mediation.
4. The Mediation occurred as scheduled and noticed.

5. Vickers received actual notice and confirmation of the mediation.
6. Vickers did not attend the mediation.
7. Vickers did not call or advise that she could not be present.
8. Vickers has not communicated with Mattress Now's counsel since the mediation.
9. At the mediation, Mattress Now and KS Bank, Inc. ("KS Bank") reached a Mediated Settlement Agreement.
10. Because Vickers was not present, the settlement did not resolve claims as to her; in fact, such claims were reserved for future disposition in this civil action case.
11. After consummation of the settlement with KS Bank, dismissals were filed by parties who did participate in the Mediation and did resolve their disputes. As a result, the only claims remaining are those brought by Mattress Now against Vickers.
12. Mediator Brown submitted his invoice following the mediation.
13. KS Bank and Mattress Now have each paid \$841.80, which is their one-third share of Mediator Brown's invoice.
14. Although Mediator Brown has submitted the invoice to Vickers requesting payment of her one-third share in the amount of \$841.80, she has not paid Mediator Brown.
15. Vickers has failed to contest the fact that she was on notice of the Mediation, or otherwise show any cause as to why she failed to attend.
16. Vickers has failed to show any cause as to why she has not paid her share of Mediator Brown's fee that, as a named party herein, she is by the Mediation Rules required to pay.

17. Although Vickers is appearing *pro se*, she attended the scheduling conference with the court and has been a participant in the North Carolina Business Court electronic mail notification service thereafter.

18. Vickers has not notified the Court of any change of email address.

BASED UPON the foregoing FINDINGS, the court CONCLUDES that:

1. Vickers, without good cause, willfully failed to attend the Mediation.
2. Vickers is required pay her share of Mediator Brown's fee for the first Mediation.
3. Further, Vickers shall be compelled to attend another Mediation, of which she shall bear the total expense incurred by all parties.

NOW THEREFORE, based upon the foregoing FINDINGS and CONCLUSIONS, it is ORDERED that Defendant Marie Vickers shall:

1. Within two weeks of the filing of this Order, pay \$841.80 to Mediator David Brown in accordance with his invoice, copies of which were provided to Vickers by Mediator Brown and were also attached to the Motion.
2. Attend and participate in good faith at a second Mediation, the time and date for which are to be set and noticed by Mediator Brown.
3. Pay the full expense of the second Mediation as a sanction for her willful failure to attend the first Mediation.

SO ORDERED, this the ____ day of September, 2009.

John R. Jolly, Jr.
Special Superior Court Judge for
Complex Business Cases