



West Virginia E-Filing Notice

CC-19-2023-C-206

Judge: David Hammer

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NOTICE OF FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA
West Virginia Mountain Party v. David Tabb
CC-19-2023-C-206

The following order - motion was FILED on 3/28/2024 2:04:17 PM

Notice Date: 3/28/2024 2:04:17 PM

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CLERK OF THE CIRCUIT COURT
Jefferson County
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In the Circuit Court of Jefferson County, West Virginia

**West Virginia Mountain Party,
Denise Binion, it's Chairperson,**
Plaintiffs,

v.

Case No. CC-19-2023-C-206
Judge David Hammer

**David Tabb,
Daniel P. Lutz, Jr.,**
Defendants

ORDER GRANTING DEFAULT JUDGMENT AGAINST DEFENDANTS

The Plaintiffs, by counsel, and pursuant Rule 37 of the West Virginia Rules of Civil Procedure and all other applicable law, have filed a Motion for Default Judgment for Failure to Comply with Discovery and Prior Orders of this Court against both Defendants for their repeated attempts to delay this proceeding and willful failure to comply with discovery requests and this Court's prior Order Granting Motion to Compel. The Defendants have responded in objection to this Motion.

Pursuant to Rule 37(b)(2), if a party fails to comply with discovery and related orders of the Court, the Court may render judgment by default against the disobedient party. "Striking of pleadings and rendering a judgment by default against party as sanction for failing to comply with order to provide or permit discovery may be imposed by court where it has been established through evidentiary hearing and in light of full record before court that failure to comply has been due to willfulness, bad faith, or fault of disobedient party and, further, that sanctions are otherwise just." Woolwine v. Raleigh General Hosp., 460 S.E.2d 457, 194 W.Va. 322 (1995). "Circuit court did not abuse its discretion in entering default judgment against party which intentionally or with gross negligence failed, on many occasions and over lengthy time, to obey circuit court' orders requiring discovery, where trial court attempted to impose lesser sanctions

before entering default judgment.” Given v. Field, 484 S.E.2d 647, 199 W.Va. 394 (1997).

By Order dated January 10, 2024, this Court ordered the Defendants to “fully and completely respond, without objection, to the written discovery requests on or before January 18, 2024” and to provide available dates for their depositions on or before January 18, 2024. The Defendants provided written responses on January 18 (Lutz) and January 22 (Tabb), 2024. A review of these responses confirm that the Defendants failed to respond to most of the written requests. They continue to raise objections and arguments that have been decided by this Court in favor of Plaintiffs. They continue to avoid answering the questions notwithstanding the Court’s Order Granting Motion to Compel. The Defendants have also failed to provide any available dates for their depositions.

It is become quite apparent that the Defendants seek to avoid compliance with the rules and orders of this Court to delay these proceedings. The West Virginia Mountain Party is being immediately harmed in an election year as the Defendants are impeding the legal process to avoid disposition.

For these reasons, default judgment is proper at this time. It is therefore **ORDERED** that judgment is **GRANTED** in favor of Plaintiffs as to all Counts in the Complaint. It is hereby declared that Plaintiffs properly control the West Virginia Mountain Party. A hearing on damages will be set by separate order.

The Court notes the exceptions and objections of the Defendants.

The Clerk shall see that this Order is sent to all parties.

/s/ David M. Hammer
Circuit Court Judge
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.