



GRANTED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

Michael Schiferl

District Court Judge

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| <p>DISTRICT COURT, OTERO COUNTY, COLORADO</p> <p>13 W. 3RD STREET, ROOM 207 LA JUNTA, CO 81050</p> <hr/> <p>COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION</p> <p>Plaintiff,</p> <p>v.</p> <p>Pyramid Holdings LLC</p> <p>Defendant(s).</p> | <p>▲ COURT USE ONLY ▲</p> |
| <p>JOHN W. SUTHERS, Attorney General TRISHA L. CULP, Assistant Attorney General* 1525 Sherman Street, 5th Floor Denver, CO 80203 (303) 866-6107 Registration Number: 35833 *Counsel of Record</p> | <p>Case No.: 2009CV97</p> |

MOTION FOR DEFAULT JUDGMENT

Plaintiff, the State of Colorado, Department of Public Health and Environment, Division of Administration, Water Quality Control Division ("the Department"), by Colorado Attorney General John Suthers and undersigned counsel, moves the court pursuant to Colo.R.Civ.P. 55 and 121, § 1-14 for Default Judgment.

Pursuant to Colo.R.Civ.P. 121 § 1-15(8), no conference regarding this Motion has occurred because the very nature of a Motion for Default Judgment suggests it would be inappropriate to confer on such Motion.

In support of this Motion, the Department states as follows:

INTRODUCTION

The Department comes before this court after having spent considerable resources and several years in administrative enforcement action with the Defendant. Thus far Defendant has failed to take proper and sufficient action to ensure provision of safe potable

water to the public. Defendant's actions in this civil case continue to demonstrate the Defendant's repeated failure to take the necessary steps to address the proceedings pending against it.

ARGUMENT

1. The Department hereby moves for entry of Default Judgment pursuant to Colo.R.Civ.P. 55 and 121, § 1-14.

2. The Department filed its Complaint for Injunction and Penalties in this matter on August 10, 2009.

3. The Department served its Summons and Complaint on Defendant Michael R. Bourget of Pyramid Holdings LLC on September 2, 2009. The Summons and Return of Service are attached hereto as Exhibit 4 and therefore filed with the Court in accordance with Colo.R.Civ.P. 4(e) and 5(h). Service was proper pursuant to Colo.R.Civ.P. 4.

4. A party is required to admit or deny the allegations made in a Complaint in a responsive timely pleading. Colo.R.Civ.P. 8(b). Any allegations contained in the Complaint which are not denied in a responsive pleading are deemed admitted. Colo.R.Civ.P. 8(d); *see also Denman v. Burlington N. R.R. Co.*, 761 P.2d 244, 247 (Colo. Ct. App. 1988) (Great Western had impliedly admitted the averments in the complaint by failing to deny them in a timely responsive pleading.”).

5. Defendant's Answer was required to be filed by September 22, 2009. Defendant has failed to file an Answer to the Department's Complaint within twenty (20) days after Summons was served on him in the State of Colorado as required by Colo.R.Civ.P. 12(a).

6. Because Defendant failed to deny the allegations in the Department's Complaint in a responsive timely pleading, all of the allegations in the Department's Complaint are deemed admitted. Colo.R.Civ.P. 8(d); *see also Denman v. Burlington N. R.R. Co.*, 761 P.2d 244, 247 (Colo. Ct. App. 1988). Accordingly, based on the pleadings there is no disputed issue of material fact.

7. Venue is proper in Otero County pursuant to Colo.R.Civ.P. 98(b)(1) because the Department seeks a penalty imposed by statute and the claims arose in Otero County. Venue is also proper pursuant to COLO. REV. STAT. § 25-1-114.1(4), which provides that a proceeding for an injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to section 25-1.5-202 may be brought in the district court of the county in which the violation is alleged to have occurred. *See* Affidavit of Trisha L. Culp, Esq., attached hereto and incorporated herein by reference as Exhibit 1.

8. Defendant is not an infant, an incompetent person, an officer or agency of the State of Colorado, or in the military service. *See* Affidavit of Trisha L. Culp, Esq., attached hereto and incorporated herein by reference as Exhibit 1.

9. The Department asks this Court to enter an order for a permanent mandatory injunction requiring Defendant to immediately comply with the Colorado Primary Drinking Water Regulations, 5 CCR 1003-1, Articles 1 through 13.

10. The Department further asks this Court to enter an order for a permanent mandatory injunction requiring Defendants to comply, within thirty days of issuance of the injunction unless otherwise specified, with the terms of Enforcement Order Nos. DC-051130-1, DC-060224-2, DC-161130-5, DC-070215-6, DC-070831-13.

11. As set forth in the attached affidavit of Scott Klarich, Defendant is liable to the Department for a total penalty amount of \$365,000 for failure to comply with enforcement orders, which is contained in the Department's First Claim for Relief. *See* Affidavit of Scott Klarich, attached hereto and incorporated herein by reference as Exhibit 2, and Penalty Computation Worksheet, attached hereto and incorporated herein by reference as Exhibit 3. However, because the Department filed this action pursuant to Colo.R.Civ.P. 16.1, the Department is limited to a maximum penalty of \$100,000. Accordingly, the Department limits its request for penalties to \$100,000.

12. The Department notes that it has assessed administrative penalties for violations contained in this action in the amount of \$3,360, which amount has been insufficient to bring the Defendant into compliance. A significant penalty is warranted. If the Court denies this Motion or awards penalties less than \$100,000 the Department reserves the right to pursue civil or administrative penalties for the remaining claims cited in the Department's Complaint.

WHEREFORE, the Department moves this Court to enter default judgment against Defendant, thereby finding in favor of the Department against the Defendant for all Claims for Relief stated in the Department's Complaint, Order Defendant to perform the injunctive relief specified in the Complaint, and to pay the Department the principal amount of \$100,000.

DATED this 17th day of November, 2009.

JOHN W. SUTHERS
Attorney General

/s/Trisha L. Culp
TRISHA L. CULP, 35833*
Assistant Attorney General
Natural Resources and Environment Section

Attorneys for Plaintiff

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PLAINTIFF'S ADDRESS:
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive So.
Denver, Colo. 80222-1530

CERTIFICATE OF SERVICE

I do hereby certify that on the 17th day of November, 2009, a copy of the foregoing **MOTION FOR DEFAULT JUDGMENT** with exhibits was mailed, First Class U.S. postage prepaid, to the following:

Michael Bourget
Pyramid Holdings LLC
P.O. Box 1053
La Junta, Colorado 81050

/s/Linda Miller
Linda Miller

This document constitutes a ruling of the court and should be treated as such.

Judge: Michael Schiferl

Current Date: Nov 19, 2009

Case Number: 2009CV97

/s/ Judge Michael Schiferl