

IN THE CIRCUIT COURT OF DOUGLAS, MISSOURI

STATE OF MISSOURI ex rel.)
Attorney General Chris Koster,)
and the Missouri Department of)
Natural Resources,)

Plaintiff,)

v.)

KINSMAN-ELIAS HOLDINGS, L.L.C.,)

Defendant.)

CERTIFIED TO BE A TRUE AND CORRECT COPY
KIM HATHCOCK, CIRCUIT CLERK
DOUGLAS COUNTY, MISSOURI

BY Delana Hathcock
DATE May 15, 2015

Case No. 14DG-CC00123

Entry of Default Judgment and Assessment of Civil Penalties

This Court, upon review and after the hearing on Plaintiffs' Motion for Default Judgment against Defendant, finds that:

1. The State's Petition in the above-styled action was filed with this Court on June 20, 2014.
2. Defendant was subsequently served with a summons and copy of the Petition on October 14, 2014.
3. Defendant Kinsman-Elias Holdings LLC failed to file a timely Answer to any of the allegations pled in the Petition.
4. Supreme Court Rule 55.25(a) governs the timing of pleadings and provides in relevant part that:

A defendant shall file an answer within thirty days after the service of the summons and petition, except where service by mail is had, in which event a defendant shall file

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an answer within thirty days after the acknowledgment of receipt of summons and petition or return registered or certified mail receipt is filed in the case or within forty-five days after the first publication of notice if neither personal service nor service by mail is had.

5. Supreme Court Rule 55.09 explains the effect of the party's failure to file an answer:

Specific averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleadings. Specific averments in a pleading to which no responsive pleading is required shall be taken as denied.

6. In light of Defendant's failure to file a timely Answer with this Court, Defendant is subject to the entry of an Order of Default Judgment pursuant to Supreme Court Rule 74.05. Supreme Court Rule 74.05 provides in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, upon proof of damages or entitlement to other relief, a judgment may be entered against the defaulting party. The entry of an interlocutory order of default is not a condition precedent to the entry of a default judgment.

7. By virtue of Defendant's failure to file a timely Answer or responsive pleading within thirty (30) days after service of the summons, Defendant is deemed in default and the facts alleged in Plaintiff's Petition are deemed admitted.

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8. This Court has authority to issue an injunction and assess civil penalties against Defendant, pursuant to Supreme Court Rule 74.05(c), which states: “A default judgment may include an award of damages, other relief, or both.”

9. Where statutorily authorized, the trial court has broad discretion in assessing civil penalties. *State ex rel. Ashcroft v. Church*, 664 S.W.2d 586, 589 (Mo. Ct. App. 1984).

10. Civil penalties are legally distinct from money or punitive damages. *See State v. Spilton*, 315 S.W.3d 350, at 358 (Mo. 2010).

11. Section 644.076.1 RSMo¹ authorizes this court to assess civil penalties of up to Ten Thousand Dollars (\$10,000.00) per day for each day of each violation of the Missouri Clean Water Law and implementing regulations.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

12. The Court finds that the terms of this Judgment protect the public’s interest.

¹ All statutory references shall be to the 2014 Cumulative Supplement to the Missouri Revised Statute 2000, unless specifically stated otherwise.

13. For purposes of this decree, this Court has jurisdiction over the subject matter of this action and over the parties hereto. This Judgment covers matters alleged in Plaintiff, State of Missouri's Petition.

14. The provisions of this Judgment shall be binding upon the parties to this Judgment as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or will be acting in concert or privity with, on behalf of the parties to this judgment or their agents, servants, employees, heirs, successors, and assigns.

15. Defendant is ordered to obey, abide by and comply with this Default Judgment, and the Missouri Clean Water Law, Chapter 644, RSMo, and the rules and regulations promulgated thereunder, including obtaining a permit prior to the operation of any regulated wastewater treatment facility, as described in Plaintiff's *Petition for Injunctive Relief and Civil Penalties*.

16. Based upon the evidence and testimony taken before this Court, the Court finds that a civil penalty in the amount of \$ 16,481⁵⁶/₁₀₀ is assessed against Defendant.

17. Defendant is hereby ordered to immediately forward civil penalties in the amount of \$ 16,481⁵⁶/₁₀₀ in the form of a certified

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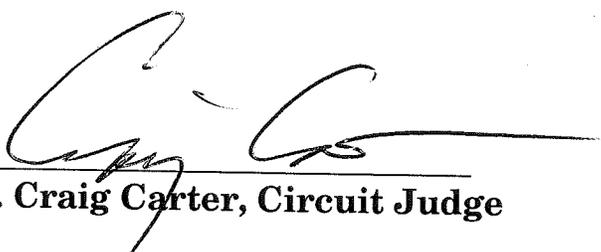
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check, made payable to the "State of Missouri (Douglas)," to Collections Specialist, P.O. Box 899, Jefferson City, MO 65102-0899.

18. This Judgment does not discharge any other potentially responsible parties.

19. All costs associated with this action shall be paid by Defendants.

IT IS SO ORDERED.



Hon. R. Craig Carter, Circuit Judge

Dated this 14 day of MAY, 2015

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