

<b>Ruderman v New York State Ins. Fund</b>
2020 NY Slip Op 30915(U)
March 27, 2020
Supreme Court, New York County
Docket Number: 650940/2011
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

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IRVING RUDERMAN,

Index No. 650940/2011

Plaintiff

- against -

DECISION AND ORDER

NEW YORK STATE INSURANCE FUND and JOHN/  
JANE DOES I-XX,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff claims defendant denied employment to him based on his age. He moves to compel the deposition of defendant's employee Martha Golden, one of at least 14 employees who interviewed plaintiff for the two trainee positions for which he applied but was not hired. C.P.L.R. § 3124. Defendant already produced Golden's notes through disclosure showing that age was a factor in her hiring decisions for the two positions, although not necessarily in her decision regarding plaintiff. Plaintiff claims that multiple interviewers asked him about his age and does not suggest that Golden was the final decisionmaker for either of the two positions.

A stipulated Status Conference Order dated August 1, 2019, allowed plaintiff until October 30, 2019, to depose Golden. On August 28, 2019, plaintiff's attorney, Imbesi Law P.C., attempted to serve Golden with a subpoena for her deposition September 17,

2019, but did not effect service timely 20 days in advance of September 17, 2019, C.P.L.R. § 3107, so cancelled that deposition date, and on September 16, 2019, served Golden with a subpoena for her deposition October 24, 2019. A Status Conference Order dated September 19, 2019, shortened plaintiff's time to depose Golden to October 28, 2019, again upon plaintiff's consent.

On October 2, 2019, the primary attorney at Imbesi Law assigned to plaintiff's case, Israel Klein, left that firm. Mr. Klein, now at another firm that subsequently substituted for Imbesi Law, surmises that no one at Imbesi Law was capable of reviewing plaintiff's case sufficiently between October 2 and 24, 2019, to conduct Golden's deposition or at least to reschedule it closer to October 28, 2019, or request an extension of that deadline before it expired. No affidavit based on personal knowledge from anyone at Imbesi Law or even any hearsay evidence of communications between Imbesi Law and Mr. Klein or between Imbesi Law and plaintiff supports this speculation. BBCN Bank v. 12th Ave. Rest. Group, Inc., 144 A.D.3d 494, 495 (1st Dep't 2016); Carmody v. 208-210 E. 31st Realty, LLC, 135 A.D.3d 491, 491 (1st Dep't 2016).

In fact Mr. Klein contradicts this speculation by also suggesting that Golden's deposition was not conducted or rescheduled, and no extension was sought, because plaintiff was transferring his case to Mr. Klein's new firm. Yet again,

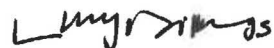
neither Mr. Klein, nor anyone at his new firm, nor plaintiff explains why Mr. Klein or another attorney at his new firm was incapable of conducting Golden's deposition October 24, 2019, or at least rescheduling it closer to October 28, 2019, or requesting an extension of that deadline before it expired.

In the over eight years that plaintiff's action has been pending there has been ample opportunity for plaintiff to conduct Golden's deposition if he believed Golden was a critical witness among all the interviewers. At this point, plaintiff has waived her deposition that was to have been conducted by October 28, 2019, Alvarez v. Feola, 140 A.D.3d 596, 597 (1st Dep't 2016); Perez De Sanchez v. Trevz Trucking, 124 A.D.3d 527, 528 (1st Dep't 2015); Stolowski v. 234 E. 178th St. LLC, 104 A.D.3d 569, 570 (1st Dep't 2013); Sereda v. Sounds of Cuba, Inc., 95 A.D.3d 651, 652 (1st Dep't 2012), and failed to substantiate an adequate excuse for that default warranting an extension of that deadline. C.P.L.R. §§ 2004, 2005; Hereford Ins. Co. v. Forest Hills Med., P.C., 172 A.D.3d 567, 568 (1st Dep't 2019); Le Monda v. City of New York, 159 A.D.3d 470, 470 (1st Dep't 2018); BBCN Bank v. 12th Ave. Rest. Group, Inc., 144 A.D.3d at 495; Carmody v. 208-210 E. 31st Realty, LLC, 135 A.D.3d at 491. See Anderson & Anderson LLP-Guangzhou v. North Am. Foreign Trading Corp., 165 A.D.3d 511, 512 (1st Dep't 2018); Silva v. Lakins, 118 A.D.3d 556, 557 (1st Dep't 2014). Therefore the court denies plaintiff's motion to

compel the deposition of defendant's employee Martha Golden.

C.P.L.R. § 3124.

DATED: March 27, 2020



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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
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