

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

MARGARET DEVORE, Complainant,

VS.

CITIZEN'S STATE BANK, Respondent.

CP# 08-80-7063

Notice of Hearing in the above-captioned case was issued on April 15, 1986. Hearing was scheduled for August 20, 1986. On August 12, 1986, Complainant filed for continuance based on the fact that Citizens State Bank was closed and a receiver was appointed. Attorney David H. Opheim assumed the pending litigation on behalf of Respondent. Hearing was continued until March 10, 1987.

The Federal Deposit Insurance Corporation was substituted for Citizens State Bank on February 2, 1987, at the request of Counsel Opheim.

On March 5th, 1987, Assistant Attorney General Teresa Baustian applied for a continuance to allow Complainant time to find an attorney to represent her. This was the result of a potential conflict of interest with the Attorney General's office.

On March 9th, 1987, this Hearing Officer allowed the continuance and ordered Complainant to notify her as soon as she retained counsel in order that the hearing could be scheduled no later than 60 days from March 9th, 1987. She failed to do so. On August 5, 1987, the Executive Director of the Commission wrote a letter to DeVore requesting that she respond with the requested information within 10 days or it would be assumed she did not wish to proceed with her case.

On July 29, 1987, Attorney Opheim withdrew as counsel, and Attorney Paul A. Zoss appeared on behalf of Respondent.

On September 14th, 1987, Attorney Sally H. Peck appeared on behalf of Complainant. The hearing was rescheduled for December 15th, 1987. On December 4th, 1987, Complainant applied for continuance because discovery had not been completed. The hearing was again continued and set for February 16th, 1988.

On January 25th, 1988, Attorney Peck applied to withdraw as counsel for Complainant. The application was granted at the request of Complainant, who stated by affidavit that she had obtained other counsel.

On February 16, 1988, the date of the Hearing, neither the Complainant nor an attorney for the Complainant appeared for the Hearing. The Commission secretary informed the Hearing Officer that Complainant had placed a call to Teresa Baustian, Assistant Attorney General, at 8:15 a.m.

on the 16th. Present for the Hearing was the Respondent, Respondent's witnesses and Michael J. Cunningham, Attorney for Respondent (FDIC as receiver for Citizens State Bank).

At the request of the Hearing Officer and in her presence, Attorney Cunningham called the number left by Complainant (1- 319-338-9165) and talked with DeVore. DeVore indicated that she did not wish to be present at the Hearing without representation. When asked who her attorney was, she advised that she had spoken to an attorney by the name of Richard Shulman, an attorney in Iowa City, regarding her representation. She also stated that Mr. Shulman would be working with another attorney whose name she did not know. An attempt to contact Mr. Shulman at 1- 319-338-4532, which is listed in the Iowa City phone book as Ins home number, was made. There was no business listing for an Attorney Shulman. The first two times the phone call was placed, the line was busy and the last three times the phone call was placed, there was no answer.

Iowa R.Civ.P., 232(b) provides that in an instance of default, the party who is present may present the evidence that they have.

Respondent was given an opportunity to do so. Respondent declined reserving the right to do so in the event that the default is set aside.

RECOMMENDED DECISION AND ORDER

It is recommended that complainant, Margaret DeVore, be in default pursuant to Iowa R.Civ.P. 230(c) which provides that a party shall be in default whenever the party fails to be present for trial.

IT IS ORDERED that MARGARET DEVORE is in default in case CP #08-80-7063 and default judgement is entered against her.

Signed this 3rd day of March 1988.

IONE G. SHADDUCK
Hearing Officer

FINAL ORDER

On April 7, 1988, at its regular meeting, the Iowa Civil Rights Commission adopted the proposed decision of Hearing Officer Ione G. Shadduck recommending that Complainant, Margaret DeVore, be in default pursuant to Iowa R. Civ. P. 230(c) for failure to be present for trial.

IT IS ORDERED that MARGARET DEVORE is in default in case CP #08-80-7063 and default judgment is entered against her.

Signed this 20th day of April 1988.

JOHN STOKES, Chairperson

Iowa Civil Rights Commission