

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KEVIN DOOLEY KENT, *in his capacity as Receiver for Broad Reach Capital, L.P., Broad Reach Partners, LLC, Investment Consulting, LLC, and CV Investments LLC,*

Plaintiff,

v.

RONALD HIGHTOWER, JANET HIGHTOWER, BLACKBURN INTERNATIONAL LIMITED, and VESTIMENTA INVESTMENTS, LLC,

Defendants.

Case No. 2:22-cv-1195 (MCA) (SDA)

REPORT AND RECOMMENDATION

May 19, 2025

STACEY D. ADAMS, United States Magistrate Judge

THIS MATTER comes before the Court *sua sponte* due to the repeated failures of Defendants Ronald Hightower (“Ronald”) and Janet Hightower (“Janet”) (together, “Defendants”)¹ to obey Court Orders and appear for status conferences. For the reasons set forth below, it is respectfully recommended that Defendants’ Answer be stricken and default be entered against them.

BACKGROUND AND PROCEDURAL HISTORY

This action was commenced on March 4, 2022 by Receiver Kevin Dooley Kent (“Plaintiff”) (Compl., ECF No. 1). This action was brought pursuant to a June 29, 2020 Order issued by the Honorable Madeline Cox Arleo, U.S.D.J., in the underlying action titled *Securities*

¹ Default was entered against the two corporate Defendants, Blackburn International Limited (“Blackburn”) and Vestimenta Investments, LLC (“Vestimenta”) on August 12, 2024. Any reference to “Defendants” herein refers only to the two individual defendants, Ronald Hightower and Janet Hightower.

and Exchange Commission v. Brenda Smith, Case No. 2:19-cv-17213 (MCA) (SDA) (the “Underlying Action”). The Underlying Action arose out of an investment advisory fraud in which, *inter alia*, Ms. Brenda Smith (“Smith”) solicited approximately \$100 million from investors for purported investment in securities trading strategies. (Compl., ¶ 2). In reality, Smith took the majority of these funds for unrelated companies, to pay back other investors, and for personal use. (*Id.*). When confronted by an investor trying to redeem its investment, Smith created a fictitious evaluation of assets backed by false claims that she held billions of dollars in assets through a company she owned. (*Id.*) Smith was criminally prosecuted for her conduct, pled guilty to securities fraud and incarcerated. (*Id.* ¶ 5).

Plaintiff was appointed by Judge Arleo to serve as the Receiver for purposes of marshaling and preserving all assets to maximize the recovery available to investors defrauded by Smith. (*Id.* ¶ 7). In the instant receivership action, Defendants are husband and wife. (*Id.* ¶ 15). Plaintiff alleges Blackburn is a legal entity formed in St. Kitts & Nevis. (*Id.* ¶ 16). Ronald is its managing member, president, authorized chief executive officer, and authorized signatory. (*Id.* ¶ 18). Vestimenta is a legal entity which is allegedly controlled solely by Defendants (*Id.* ¶ 22). Plaintiff alleges Smith caused a total of \$4,941,466.24 in Receivership assets to be transferred to a bank account owned by Defendants. (*Id.* ¶¶ 34-35). Defendants admit they received funds from Smith, but deny the transfers were fraudulent. (ECF No. 31, “Ans.,” ¶ 34).

An initial pretrial scheduling order, setting forth a discovery schedule, was entered on February 6, 2023. (ECF No. 33). That Order set a deadline for fact discovery of December 6, 2024 and a deadline for expert discovery of June 10, 2024. (*Id.*). The deadline for fact discovery was subsequently extended multiple times until December 6, 2023 (ECF No. 42), December 19, 2023 (ECF No. 69), April 9, 2024 (ECF No. 77) and then June 28, 2024 (ECF No. 82).

On June 25, 2024, the Court granted the motion of Defendants' counsel to withdraw. (ECF No. 89). Defendants were given until July 31, 2024 to retain new counsel or they would be deemed to be proceeding *pro se*. (*Id.*). The Court stayed discovery deadlines with the intention of "revisit[ing] the discovery schedule after the issue of [D]efendants' representation or *pro se* status has been resolved[.]" (ECF No. 89).

The matter was subsequently reassigned to the undersigned, and a status conference was scheduled for September 9, 2024 via video conference. (ECF No. 99). Defendants failed to appear despite being properly notified. (ECF No. 96). Defendants were well aware of the conference, having provided comments to Plaintiff's counsel for a joint letter submitted to the Court prior to the conference² and having communicated with the undersigned's chambers via email on the date of the conference. (*Id.*). Defendants claimed they had WiFi issues and could not connect. (*Id.*). Affording Defendants the benefit of the doubt, the Court rescheduled the conference for September 17, 2024. (*Id.*). The Court's Order advised Defendants that if they could not secure WiFi or a means to participate in the conference virtually, then they must appear in person at the Courthouse. (*Id.*). The Court explained that failure to appear again might result in sanctions, including striking Defendants' pleadings. (*Id.*).

Defendants appeared for the rescheduled September 17, 2024 status conference and the Court entered an Amended Scheduling Order. (ECF No. 97). Pursuant to that Order, fact discovery was again extended until November 18, 2024, and Defendants were directed to cooperate with Plaintiff's counsel to appear for their depositions. (*Id.*). Expert discovery was extended until March 31, 2025. (*Id.*). A status conference was scheduled before the undersigned on January 3, 2025 via videoconference. (*Id.*).

² Defendants never signed the joint letter, claiming to have WiFi issues. (ECF No. 95, note 1).

Once again, Defendants failed to appear for the January 3, 2025 conference. (ECF No. 98). No communication was provided to the Court requesting an adjournment or otherwise explaining their absence. Accordingly, this Court issued an Order to Show Cause (“OTSC”), requiring Defendants to appear in person at the Courthouse on January 27, 2025, and explain why they failed to appear for the conference and why their answers should not be stricken for failure to comply with Court Orders. (ECF No. 99). Janet submitted a letter on January 16, 2025, providing excuses as to why Defendants failed to appear for the January 3, 2025 conference. (ECF No. 101). She admitted she was aware of the conference and received the email with the login information to appear virtually, but claimed she neglected to print it out or calendar the date. (*Id.*) Janet admitted she received a call from chambers on the date of the conference reminding her to log in, but claimed her husband was already out and that she was unable to connect. (*Id.*) Janet candidly stated that she “dropped the ball.” (*Id.*) Finally, Janet stated Defendants did not have the financial ability to travel to New Jersey to appear for the OTSC and requested it be converted to a virtual conference. (*Id.*) The Court issued an Order denying the request for a virtual conference and again requiring all parties to appear in person. (ECF No. 103). The Order notified the parties that if they failed to appear the matter would proceed in their absence and sanctions may be issued. (*Id.*)

Defendants again failed to appear in Court on January 27, 2025 for the OTSC. Although the Court would have been well within its authority to strike Defendants’ Answer at that time for failing to appear on September 9, 2024, January 3, 2025 and again on January 27, 2025, the Court declined to do so at that time and instead Ordered Defendants to pay sanctions in the form of attorney’s fees and costs to Plaintiff in the amount of \$2,436.20. (ECF No. 105). The Court deemed fact discovery closed and set a deadline of March 31, 2025 for expert discovery. (*Id.*) The Court then scheduled an in-person status conference for April 1, 2025. (*Id.*) The Order stated, “if

Defendants fail to appear at this conference, the Court will consider further sanctions, including striking Defendants' answer and further monetary sanctions." (*Id.*)

Defendants again failed to appear on April 1, 2025. They provided no letter to the Court and have not contacted the Court since that date. The Court directed Plaintiff to submit another affidavit of services for their legal fees and costs in attending the conference and indicated it would provide further relief via written Order.

LEGAL STANDARD AND ANALYSIS

Fed. R. Civ. P. 16(f)(1) provides that a Court may issue orders, including those authorized by Fed. R. Civ. P. 37(b)(2)(a)(ii)-(iv), if a party fails to obey pretrial orders. *Hunt-Ruble v. Lord, Worrell & Richter, Inc.*, No. 10-cv-4520 (JEI) (AMD), 2012 WL 2340418, at *3 (D.N.J. June 19, 2012); Fed. R. Civ. P. 37(b)(2)(A). Available sanctions include "striking pleadings in whole or in part." Fed. R. Civ. P. 37(b)(2)(A)(iii).

"In deciding whether sanctions that 'deprive a party of the right to proceed with or defend against a claim' are appropriate," the Court considers six factors set forth by the Third Circuit in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863 (3d Cir. 1984) (internal citations omitted). Those factors are: (1) the extent of the party's personal responsibility, (2) prejudice to the adversary, (3) history of dilatoriness, (4) willful or bad faith conduct of an attorney, (5) alternative sanctions, and (6) meritoriousness of the claims or defenses. *Id.* at 868. No single factor is dispositive, and dismissal may be appropriate even if some of the factors are not met. *See Hildebrand v. Allegheny Cnty.*, 923 F.3d 128, 132 (3d Cir. 2019). "[W]hen a litigant's conduct makes adjudication of the case impossible, such balancing under *Poulis* is unnecessary." *McLaren v. NJ State Dept. of Educ.*, 462 Fed. Appx. 148 (3d Cir. 2012) (citing *Guver v. Beard*, 907 F.2d 1424, 1429–30 (3d Cir.1990)). Applying the *Poulis* factors here, the Court concludes they weigh in favor of striking Defendants' pleadings.

1. The Extent of the Party's Personal Responsibility

In the instant case, Defendants have consistently failed to abide by Court Orders or appear for regular status conferences. They failed to appear for: (1) the September 9, 2024 status conference; (2) the January 3, 2025 status conference; (3) the return order to show cause hearing on January 27, 2025; and (4) the April 1, 2025 status conference. The record reflects that this is a pattern with Defendants. Since their attorney withdrew from representation, Defendants' defense strategy appears to be one of simply avoiding their obligations to the Court. The Court always has the right to require parties and counsel to appear in person at the Courthouse in its discretion when warranted. Here, the Court made the decision to require in person proceedings after Defendants repeatedly failed to appear or claimed WiFi related issues that affected their ability to connect virtually. As the Court is tasked with moving this matter forward, and Defendants repeatedly claimed an inability to appear virtually, in person conferences were the only reliable means of proceeding. Defendants claim that they cannot afford to travel to Court does not excuse them from appearing. They are accused in this lawsuit of receiving almost \$5 million dollars in fraudulent transfers from Ms. Smith, and the Receiver is attempting to recoup these funds via this action. The Court cannot move this matter forward if Defendants repeatedly fail to participate. Accordingly, the Court finds that Defendants are personally responsible for their repeated failure to attend Court proceedings and, at this point, appear to have willfully chosen to abandon their defense. Accordingly, the first *Poulis* factor weighs in favor of dismissal.

2. Prejudice to the Adversary

Prejudice is not limited to irreparable harm but may include depriving a party of necessary information or the ability to prepare for trial. *See Adams v. Trs. of N.J. Brewery Emps.' Pension Tr. Fund*, 29 F.3d 863, 873 (3d Cir. 1994) ("Examples of prejudice include the irretrievable loss of

evidence, the inevitable dimming of witnesses' memories, or the excessive and possibly irreparable burdens or costs imposed on the opposing party." (internal quotations omitted)).

Here, Plaintiff is undoubtedly prejudiced by the delay. Defendants' conduct has precluded this matter from expeditiously proceeding to trial, a delay which potentially inures to Defendants' benefit because the victims of Smith's crimes continue to be deprived of their assets. Further, there is no indication that Defendants intend to proceed with this litigation. To the contrary, they appear to have abandoned their defense entirely, having failed now to appear now for four Court-mandated conferences and having no contact with the Court since January 2025. In doing so, Defendants have deprived Plaintiff of completing discovery and moving this case towards trial. *See COMSAT, Inc. v. Pentagon Performance*, No. 17-cv-12131 (SDW) (LDW), 2019 WL 2404909, at *2 (D.N.J. Jan. 22, 2019) (finding this *Poulis* factor weighed in favor of striking where "there [was] no indication that defendant ever intends to resume defense of this matter"). The Court thus finds that this factor also weighs strongly in favor of striking Defendants' answer.

3. History of Dilatoriness and Bad Faith

The third and fourth *Poulis* factors require the Court to consider the extent and history of Defendants' dilatoriness and whether they have acted in bad faith. The Third Circuit has emphasized:

Time limits imposed by the rules and the court serve an important purpose for the expeditious processing of litigation. If compliance is not feasible, a timely request for an extension should be made to the court. A history . . . of ignoring these time limits is intolerable.

Poulis, 747 F.2d at 868. Since September 2024, Defendants have exhibited a pattern of disobeying Court Orders and failing to appear for status conferences. Despite being afforded multiple chances by the Court, they have failed to appear on four separate occasions. Initially, they claimed WiFi and scheduling issues. Then, they claimed financial hardship. Most recently, Defendants did not

offer any excuse for failing to appear on January 27, 2025 or April 1, 2025. They simply ignored their obligation and have not contacted the Court since that time. Defendants' conduct has been dilatory and constitutes bad faith. The Court thus finds that these two factors also weigh in favor of striking Defendants' Answer.

4. Alternative sanctions

While mindful that “[d]ismissal must be a sanction of last, not first, resort,” *Adams*, 29 F.3d at 878 (quoting *Poullis*, 747 F.2d at 869), Defendants' repeated non-compliance with this Court's Orders and the record of non-responsiveness show that alternative sanctions would be ineffective and futile. *Tyshon Bey, LLC v. Portfolio Recovery Assocs., LLC*, No. 23-cv-2310 (ES) (MAH), 2023 WL 7001588, at *3 (D.N.J. Aug. 28, 2023) (“[T]here is no plausible reason to believe that sanctions such as fines, costs, and attorneys' fees would spur Plaintiff to resume actively litigating this case.” (citing *Briscoe v. Klaus*, 538 F.3d 252, 262 (3d Cir. 2008)), report and recommendation adopted, 2023 WL 7000835 (D.N.J. Sept. 18, 2023)).

Indeed, the Court already attempted a sanction less severe than striking Defendants' pleading. It awarded monetary sanctions to Plaintiff, but declined to strike Defendants' answer, instead giving them one final opportunity to appear in Court on April 1, 2025. (ECF No. 105). Despite this sanction, Defendants again failed to appear on April 1, 2025. Given Defendants' history of failing to follow Court Orders or appear for conferences, the Court is left with more choice but to proceed to the more severe sanction of striking Defendants' pleadings. Thus, this *Poullis* factor also weighs in favor of striking Defendants' Answer.

5. Meritoriousness of the claim or defense

The final *Poullis* factor requires the Court to consider the merits of the parties' defenses. The Third Circuit has repeatedly held that district courts must balance the *Poullis* factors and that

every factor need not weigh in favor of dismissal. *Hildebrand*, 923 F.3d at 132. Here, the Court is not in the position to substantively weigh the merits of Plaintiff’s claims or Defendants’ defenses at this point in the case. Instead, as the Court has done in other cases, the undersigned “elect[s] not to address the sixth factor because ‘the other factors . . . weigh[] heavily in favor of dismissal.’” *McNamara v. Buehler*, No. 16-cv-8941 (MCA) (SCM), 2018 WL 9880301, at *3 (D.N.J. Nov. 16, 2018) (quoting *Macon v. City of Asbury Park*, No. 07-CV-1413 (MLC), 2008 WL 1882899, at *2 (D.N.J. Apr. 24, 2008)). Since the Undersigned has found that the majority of the *Poullis* factors weigh in favor of striking, the Court is satisfied that striking Defendants’ Answer is the appropriate remedy even without weighing this factor.

CONCLUSION

For the foregoing reasons, the Undersigned respectfully recommends that the Defendants’ Answer be stricken and that default be entered against them.

s/ Stacey D. Adams
Hon. Stacey D. Adams
United States Magistrate Judge

DATED: May 19, 2025.