
THE STATE OF SOUTH DAKOTA,	*	CIV 11-269
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	APPLICATION FOR DEFAULT
	*	JUDGMENT
SCOTT OLSON DIGGING, INC.,	*	
	*	
	*	
Defendant.	*	

Plaintiff, the state of South Dakota by and through the Public Utilities Commission ("Plaintiff" or "Commission") an agency of the State of South Dakota, hereby makes application to the Court for entry of judgment by default in the above-entitled action pursuant to SDCL 15-6-55(b).

1. The Commission commenced this action on June 21, 2011 when the Minnehaha County Sheriff personally serviced the Summons and Complaint on Lori Olson the registered agent for Olson Digging, Inc. (herein "Olson Digging"). The Sheriff's return of service is attached as Exhibit A.

2. Defendant neither Answered nor filed any other pleading in reply.

3. This action was originally brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Notification Board ("One-Call").

4. One-Call ("One-Call") is a board established by SDCL 49-7A-2.

5. One-Call, pursuant to SDCL 49-7A-17, has the authority to receive complaints against persons who violate provisions of SDCL chapter 49-7A and rules

promulgated by One-Call and may, pursuant to SDCL 49-7A-18 and 49-7A-19, assess civil penalties against persons found to have violated these laws.

6. On September 13, 2010, pursuant to SDCL 49-7A-17, One-Call received three separate complaints filed by NorthWestern Energy. The Complaints are based on Defendant's failure to properly have utility facilities marked prior to excavation and failure to notify the facility operator after damaging utility facilities in violation of SDCL 49-7A.

7. After notice of each Complaint was given pursuant to 49-7A-23 and 24, Defendant Answered on October 27, 2010. A five member panel, appointed by the Chairman of One Call pursuant to SDCL 49-7A-22, determined probable cause existed to believe violations of SDCL 49-7A occurred.

8. A copy of the One-Call panel's recommendations was sent to the parties pursuant to SDCL 49-7A-27. Defendant, however, failed to respond to the recommendations. Its failure to respond, and failure to request a hearing, constitutes acceptance of the panel's recommendations per SDCL 49-7A-27

9. The panel's recommendations include a combined civil penalty against Defendant that now totals Eleven Thousand Dollars (\$11,000).

10. Individual Orders for OC10-006, 007 and 008 were served on Defendant via first class mail. The Defendant neither appealed the One-Call decision nor paid the civil penalty, and accordingly, owes Eleven Thousand Dollars (\$11,000) in civil penalties.

11. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand was served by first class mail on Defendant April 6, 2011. A copy of the written demand is attached hereto as Exhibit B.

12. At the request of One-Call, the Commission brought an action in this court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

13. Defendant has neither paid anything to the Commission nor One-Call in satisfaction of the Eleven Thousand Dollars (\$11,000) in civil fines levied by One-Call nor given any indication to the Commission or One-Call that he intends to pay the fines.

WHEREFORE, Plaintiff requests that the Court enter judgment by default against Defendant as follows:

1. For a monetary judgment in the amount of \$11,000 against Defendant.

Dated this 25th day of August, 2011

Kara C Semmler

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