

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-297

Judges:

Complainant:

ORDER

December 18, 2019

The Complainant alleged a small claims hearing officer was confused, refused to let her present evidence, and failed to rule on default judgments. The complainant also alleged a justice of the peace improperly denied her request for default judgments and failed to rule on a motion for reconsideration.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on December 18, 2019.

CONFIDENTIAL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

19-297

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

See Attached 7 pages and 2 pages of exhibits

This Complaint is against Hearing Officer, _____ and Justice of the Peace, _____ for judicial incompetence, refusal to follow the law, and what appears to be bias in case handling. Plaintiff did not get a full and fair hearing, and the procedural actions (at hearing and afterwards) were irregular and applied with bias to dismiss Plaintiff's rightful claims. This court behavior is *below the minimum standard of care* by both the hearing officer and justice of the peace.

Complaint

Hearing Officer _____ seemed perplexed and confuses and unable to understand the testimony. He started court late, was unable to figure out how to use his _____ and therefore took notes. Statements by the Defendant seem to trigger more confusion, but _____ refused to let Plaintiff present evidence and clarify how Defendant mislead the court. He refused to let Plaintiff enter evidence as to the bad/felonious character of the Defendant who lied as rebuttal.

Instead, Hearing Office _____ decided to take the verdict plus _____ defaults " _____ ". He called a recess before going on to the rest of the court calendar. Thereafter, he failed to rule on the defaults judgments, and missed multiple court rule-deadlines depriving the Plaintiff of compensation from the _____ defendants who default entirely.

Justice of the Peace _____ months later also denied _____ ' _____ ' Judgment(s) and disregarded court rules on default judgments with no explanation or hearing. Was this abuse of judge discretion? Just clearing the docket? It appears to be an act of closing the file, as the case had been lingering improperly for _____ ?

The final ruling on my *Motion for Reconsideration of Default Judgment* filed _____ has not been issued although the case is listed as Adjudicated. Is there going to be a *Reconsideration*?

History

This case was a very simple case of not delivering house repair work contracted and paid for. The contractor misrepresented his skills, and the quality of the materials used. The contractor was paid in full (by _____ checks, all cashed) and then Defendant falsely told the court that Plaintiff had shopped payment on the

checks¹ - knowing all checks had been cashed by defendants who pocketed the money! Plaintiff's hearing was the first case of the day on with Hearing Officer

I am the Plaintiff, a homeowner who paid in for repairs to my home that were done in a poor, incorrect and slipshod manner.

There are Defendants -

Defendant #1 - the Owner of He never answered, was a no show at the hearing and defaulted.

Defendant #2 - an employee/plaster expert and nephew of Defendant #1. He also defaulted.

Defendant #3 - company employee married to Defendant #2. She filed an answer, thought did not serve the Plaintiff properly, and appeared at court. All defendants live and work together.

Defendants #1 and #2 defaulted and failed to respond or appear.

Defendant #3 appeared representing herself, specifically stating on the record, that *she was not*

(See court minutes.) All three Defendants were properly served by a process server who filed Proof of Service with the court, which is in the court files. Therefore, under the court rules, Defendant #1 & 2 were in default for failure to answer the complaint and failure to appear.

Defendant #3 asked to have all checks/payment made out to her name. She used a Arizona Check Cashers, to cash all the checks.

Timeline

Case filed with the Court. All Defendants were served on and deadline for response/answer to Plaintiff was

Plaintiff filed *Application for Entry of Default* after not receiving any response or answer from Defendant's #1 and 2. Plaintiff discovered that Defendant #3 had answered, so Plaintiff did not file the *Application for Entry of Default*, against her.

Defendant # 3 served her *Answer* on Plaintiff, which was dated but not mailed timely. It was an appearance in pro se for herself only.

received Notice of Hearing set for Hearing with Hearing Officer Plaintiff requested sign Judgment(s) against the other non-appearing Defendants, who failed to respond or appear. First time was before Plaintiff presented her case with a statement from to the effect of 2nd time was immediately after said he was taking the case under advisement and a decision would be later. Officer instructed Plaintiff at that time to file the Judgment(s) directly with the Clerk of Court.

Plaintiff did file the *Request and Affidavit for Entry of Default Judgment* *Without Hearing* and *Judgment* *Without Hearing* after the hearing on Plaintiff received Hearing Officer Judgment, by mail. He ordered the case dismissed with prejudice against Defendant #3. The *Judgment* was dated the same day Officer look it under advisement and the same day he had Plaintiff file the Judgment(s). However, Officer did not act to sign the Judgment(s) that Plaintiff filed against Defendants #1 and #2, and waited before mailing his decision to the parties.

Plaintiff went to the Courthouse to inquire about when the Judgment(s) would be signed, and if Defendant #3's dismissal from the case would affect their signing. Was told by the Clerk of Court that the Judge and the dismissal judgment does not affect the to Default Judgments against Defendants #1 and #2.

for signing the ' Judgment(s), or otherwise call a hearing or act.

having heard nothing, Plaintiff called the Clerk of Court and the Clerk indicated that both ' Judgment(s) were still on the hearing officer's desk and it may take longer than

still having heard nothing, Plaintiff then filed a *Motion To Compel Officiation of Default Judgment* with the court.

and still nothing so Plaintiff returned to the Courthouse and talked to a different Clerk of Courts as to why the ' Judgment(s) were taking so long to be signed. Upon looking through the paperwork the Clerk found that Plaintiff mistakenly filled-out a wrong section on the *Judgment* *Without Hearing*. Plaintiff corrected the error, filled-out a new form and refiled the forms.

Justice of the Peace denied the ' Judgment(s) with no explanation.

Plaintiff filed a *Motion for Reconsideration of Default Judgment*.

Plaintiff has not heard from the Court on the *Motion for Reconsideration*, and feels the Court is ignoring her case and is filing this *Complaint*.

Trial Evidence Presented by Plaintiff was ignored by a confused judge

During the hearing, Plaintiff presented her case and was asking for an *Order* to recover monies paid to Defendants, for a patently defective repair (including misuse of material and not , as was contracted). Plaintiff provided evidence she made payments to defendant with a bank statement, cancelled checks (front & back), the Contract, pictures of the work done, the quality of the work, and even a wall sample showing the use of outdoor instead of as contracted.

Defendant #3- presented no documents or evidence in defense and she made a false (misleading) statement under oath that Plaintiff stopped payment on all check given to her totaling Defendant thus benefited from a cash windfall but deceived the court.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**