

IN THE STATE COURT OF DEKALB COUNTY

STATE OF GEORGIA

PATRICK C. DESMOND and MARY C. DESMOND, Individually, and MARY C. DESMOND, As Administratrix of the Estate of Patrick W. Desmond,
Plaintiffs,

vs.

CIVIL ACTION NO. 10-A-28641-2

NARCONON OF GEORGIA, INC., and NARCONON INTERNATIONAL,
Defendants.

ORDER

The above-styled case comes before the Court on Plaintiff's Motion for Sanctions. Plaintiffs have moved for sanctions to be imposed against Defendant Narconon of Georgia, Inc. ("NNGA") for what Plaintiffs describe as a pattern of discovery abuse by that Defendant. In support of their Motion, Plaintiffs argue that NNGA wilfully failed to produce documents that clearly were responsive to Plaintiffs' discovery requests and intentionally provided false, misleading written discovery responses and deposition testimony. Plaintiffs ask the Court to strike NNGA's Answer or, in the alternative, preclude NNGA from contesting certain issues at trial.

NNGA argues in response that it has not engaged in the pattern of discovery abuse described by Plaintiffs and, to the extent it did fail to timely produce requested information or give false discovery responses, such actions were inadvertent, resulting from the unsophistication of its agents, their lack of familiarity with the litigation process,

and the overwhelming volume of discovery in this case. NNGA argues that the sanctions sought by Plaintiffs are too extreme under the circumstances of this case.

This Court held multiple hearings on the present motion, including an evidentiary hearing on April 5, 2012, at which the Court heard - and had the opportunity to evaluate the credibility of - testimony regarding NNGA's discovery responses from Mary Rieser ("Rieser"), NNGA's Executive Director. In addition to multiple hearings, the issues before the Court have been briefed extensively.

After reviewing the facts, the law, and the credibility of the witness testimony presented to this Court, the Court finds that NNGA repeatedly and wilfully obstructed the discovery process both by failures to respond fully to legitimate discovery requests and, even more egregiously, by false responses. As a result, the Court finds that sanctions are warranted.¹

This case arises out of the death of Patrick Desmond ("Desmond"), who died while enrolled in NNGA's drug and alcohol rehabilitation program. In their Complaint, filed May 19, 2010, Plaintiffs alleged that NNGA negligently ran an unlicensed and unsafe housing facility, known as Delgado Development, Inc. ("Delgado"),² in connection with the Narconon program. Original Complaint, ¶¶ 21, 37. Plaintiffs also alleged that NNGA committed fraud by falsely representing to Desmond's family and a Florida drug court (which required that Desmond enroll in an in-patient rehabilitation facility) that it was capable of providing the necessary supervision and monitoring of Desmond. Original Complaint, ¶¶ 18, 42, 43. Plaintiffs further contended that NNGA's

¹ The Court wishes to emphasize that it finds no fault with the conduct of NNGA's present counsel. The Court's finding of wilful discovery misconduct is based solely on the actions of the defendant, not on any actions of its attorneys.

² Delgado was named as a defendant in this case, but Plaintiffs' claims against it were dismissed on August 17, 2012.

negligence, combined with the negligence of its co-defendants,³ caused Desmond's death. Original Complaint, ¶¶ 41, 47.

NNGA filed an Answer denying the substantive allegations of the Complaint. Specifically, it denied that it made false representations regarding its treatment program or housing and denied that it maintained or operated the housing facility at Delgado. Answer of Narconon of Georgia, Inc., ¶¶ 42, 43. NNGA also contended that it is not responsible for Desmond's death. Answer of Narconon of Georgia, Inc., ¶¶ 41, 47.

Prominent among the issues in dispute in this case are the events leading up to Desmond's death, facts surrounding NNGA's relationship with Delgado, and the issue of whether NNGA had control over the housing of its students at Delgado. Unsurprisingly, Plaintiffs made numerous discovery requests seeking information regarding the events leading up to Desmond's death, communications between NNGA and Delgado, information regarding whether NNGA had control over Delgado, and information regarding housing conditions and complaints about housing. In response, this Court finds, NNGA repeatedly failed to produce, and on multiple occasions falsely denied the existence of, clearly relevant, responsive documents and information.

I. Discovery regarding the events leading up to Desmond's death

For example, in response to written discovery requests, NNGA falsely denied the existence of statements or reports regarding the events surrounding Desmond's death. In their First Interrogatories, served with the Complaint in May, 2010, Plaintiffs requested "any statement, be it oral or in writing, from any person purporting to have

³ Plaintiffs' claims against several entities originally named as defendants in this case have been either dismissed or resolved through consent judgment.

knowledge of any aspect of the subject incident” In response, NNGA wrote that “certain writings are made by students during the course and scope of their rehabilitation with this Defendant. These writings, as part of and in the course of treatment, are routinely always shredded. It is this Defendant’s recollection some students wrote about Patrick Desmond, but the writings, which were privileged under the CPRA and HIPAA were shredded shortly after they were written in the normal course of business.” Defendant Narconon of Georgia, Inc.’s Objections and Responses to Plaintiffs’ First Interrogatories, August 2, 2010.

On January 23, 2011, NNGA provided substituted responses to Plaintiffs’ First Request for Production of Documents and Plaintiffs’ First Interrogatories. In these substituted responses, NNGA stated that it had “one document which was not shredded” “through inadvertence.” Defendant Narconon of Georgia, Inc.’s Substitute Responses to Plaintiffs’ First Interrogatories, January 23, 2011. At that time, NNGA stated that it was retaining one, single student document based on a claim of privilege.

In two depositions, NNGA’s Executive Director, Mary Rieser, was asked whether she investigated what led up to Desmond’s death. She stated that she had asked students what had happened, but she testified that “none of the students knew,” because “they were all sleeping.” Rieser Dep. Vol. 1, p. 283, l. 8 – p. 284, l. 13. See *also* Rieser Dep. Vol. 2, p. 34, l. 4-22.

The above-described discovery responses were patently false. Plaintiffs conducted months of discovery and numerous depositions with the belief that all statements regarding Desmond’s death had been shredded in the normal course of business, which in fact, as it turned out, was untrue.

On November 23, 2011, a year and a half into litigation, and after Rieser had been deposed twice, NNGA identified on a privilege log that it was withholding as work product a statement from Mary Rieser, written June 12, 2008.⁴ That four-page statement detailed Rieser's investigation into Desmond's death and described reports and statements from several other people regarding Desmond's death and the surrounding events. These reports had never been disclosed, despite Plaintiffs' written request for oral or written statements regarding the incident. (Also, in their first discovery requests, Plaintiffs had requested "[a]ll documents which reflect any investigation into the circumstances of the death of Patrick Desmond" and "[a]ll witness statements or interviews conducted with any person who has knowledge of the circumstances of the death of Patrick Desmond." NNGA responded to these requests on August 2, 2010 without producing or identifying Rieser's statement describing her investigation into Desmond's death.)

Further, Rieser's description in the June 12, 2008 statement of reports from students clearly contradicts her deposition testimony, in which she stated that none of the students knew about the incident, because they were sleeping. It also turned out that Rieser herself had written another statement regarding the incident, on June 11, 2008; that statement never was disclosed to Plaintiffs until March, 2012.

Importantly, NNGA has offered *no credible explanation* for its failure to disclose the existence of these statements regarding Desmond's death and Rieser's investigation until more than a year and a half after they were requested in discovery.

⁴ The Court later ruled that the document did not constitute work product and ordered it produced.

II. Discovery regarding the relationship between NNGA and Delgado

On February 16, 2011, NNGA stated (in response to a request for “documents relating to efforts by Narconon to maintain the Narconon facility, and/or the residents’ [sic] of students enrolled in Narconon, in 2007 – present day as drug free,” that it “does not and never has controlled the environment in which its students live while on the Narconon program.” Defendant Narconon of Georgia, Inc.’s Amended Responses to Plaintiffs’ Third Request for Production of Documents, February 16, 2011.

After receiving that written discovery response, Plaintiffs conducted numerous depositions, including two of Mary Rieser. In response to deposition questions, NNGA’s executive director denied that NNGA exercised any control over housing of its students and denied ever having even *looked into* whether it should take action in response to multiple reports of students using drugs and/or alcohol in housing.

When Rieser was asked whether NNGA had any control over Delgado Development, her answer was an unequivocal “No.” Rieser Dep., Vol. I, p. 199, l. 8 – 25. After she admitted that there were complaints of drinking and drug use at Delgado, Rieser was asked how NNGA addressed those complaints. She stated that they were addressed on an individual basis “to help [that] person learn to say no, to make the right decisions.” Rieser Dep. Vol. II, p. 148, l. 17 – 18. She testified unequivocally that the complaints were addressed individually, not in the aggregate, and that NNGA never considered whether there needed to be any rule change at Delgado or whether, because of the number of complaints, NNGA should not let its students stay at Delgado. Rieser Dep. Vol. II, p. 147, l. 11 – pp. 149, l. 18.

To the contrary, in fact, documents later produced demonstrate that, prior to Desmond's death, Rieser and others at NNGA convened a "Board of Investigation" to investigate the complaints regarding conditions at Delgado. *This investigation culminated in NNGA putting Delgado "on probation" due to housing conditions.*

On March 30th, 2012, NNGA produced a letter from NNGA's Board of Directors to Maria Delgado stating that NNGA needed to raise prices but could not do so until housing was up to standards, that "refunds due to service problems at housing cannot be tolerated," and that as a result, and because of a "recent drug incident on a night specifically that Narconon was on high alert," NNGA placed Delgado Development *on probation*. The letter stated that after a month, NNGA would "review housing in regards to safety and service" and "review [its] options."

In addition, there are other documents that were not timely identified and that demonstrate NNGA's control over housing of its students. For example, on September 4, 2012, NNGA produced, among other documents, a November 6, 2007 e-mail from Mary Rieser in which she describes how she "[has] been doing apartment inspections," "set up a system for collections" for housing payments, and made a written schedule for the staff and students at Delgado. D-GA-18658 – D-GA-18659.

Early in the litigation, Plaintiffs also requested "[a]ll communications, contracts, correspondence, agreements between Narconon and any of the following: Delgado Development, Maria Delgado, and/or Don Delgado." In its February 16, 2011 Amended Responses, NNGA produced some documents ("communications for the six month period preceding the incident giving rise to this suit,"), but NNGA failed to produce any of the communications between NNGA and Delgado regarding the "Board of

Investigation” convened by NNGA to look into housing conditions at Delgado, including the March 23, 2008 letter placing Delgado “on probation” for housing violations.

At the evidentiary hearing on the present motion, Rieser was asked why the documents regarding the Board of Investigation and the letter placing Delgado on probation had not been produced earlier. Her only explanation was that she “simply forgot.” Apr. 5, 2012 hearing, p. 24, l. 9. The Court found Rieser’s testimony and her explanation for NNGA’s failures to produce requested documents to be incredible. Likewise, the Court did not find credible Rieser’s explanation for her untruthful deposition testimony regarding whether she and NNGA had ever looked into complaints about conditions at housing or drug use at housing other than on an individual basis.

III. The Brad Taylor student file

At the same hearing, Rieser testified regarding NNGA’s efforts to locate the student file of Brad Taylor, the housing monitor at Delgado and former Narconon student, who, it was reported, consumed alcohol and possibly other drugs with Patrick Desmond the night of Desmond’s death. That file was requested by Plaintiffs, but as late as the April 5th, 2012 hearing, Rieser claimed to be unable to find it, despite the fact that she said she believed it was stored in one of two locked filing cabinets in her office. Rieser also said she needed another four to five weeks to find the file. At the April 5, 2012 hearing, Plaintiffs requested sanctions for spoliation of the file, and this Court indicated that it would consider the issue of spoliation if the file were not located and turned over to Plaintiffs within one week. The file appeared and was produced to Plaintiffs only three business days after the hearing.

“An interrogatory answer that falsely denies the existence of discoverable information is not exactly equivalent to no response. It is worse than no response.” MARTA v. Doe, 292 Ga. App. 532, 536 (2008), citing Sandoval v. Martinez, 780 P2d 1152, 1155 (N.M. App. 1989) (emphasis in original). Further, “an intentionally false [discovery response] (particularly concerning a pivotal issue in the litigation) authorizes a trial court to impose the sanctions permitted by OCGA § 9-11-37 (d) for a total failure to respond.” MARTA v. Doe, 292 Ga. App. 532, 537 (2008).

In the present case, the Court finds that NNGA intentionally, wilfully, and repeatedly provided false and misleading responses to Plaintiffs’ discovery requests regarding issues relevant to the resolution of this case. As a result of NNGA’s pattern of wilful discovery abuse, Plaintiffs were handicapped in their efforts to obtain the discovery to which they were legally entitled and which pertained to central facts of the case. It is clear to this Court that Plaintiffs were prejudiced by having to prepare for and conduct numerous depositions during months of discovery without the benefit of relevant, discoverable information which had been requested in discovery and which NNGA had led Plaintiffs to believe did not exist.⁵ Any sanction less than striking NNGA’s answer would constitute a reward for what this Court finds to be a wilful, and egregious, violation of the rules of discovery, and the resulting prejudice to Plaintiffs can be remedied by nothing less. Consequently, Plaintiff’s Motion for Sanctions hereby is

⁵ For example, Plaintiffs deposed Tracy Stepler, the *Chair* of the Board of Investigation, before Plaintiffs had learned about the investigation by NNGA into housing conditions or the fact that Delgado had been put on probation. When Ms. Stepler was asked whether she was aware of complaints about housing, she did not mention the Board of Investigation, instead responding that she remembered “one person . . . complaining about his roommates.” Stepler Dep. p. 92, l. 16-17. She also stated that she may have heard “rumors” of students using drugs or alcohol, but denied being aware of any “complaints.” Stepler Dep. p. 93, l. 4-5. It cannot be disputed that Plaintiffs were prejudiced by NNGA’s failure to disclose the Board of Investigation and produce relevant documents in a timely manner.

GRANTED, and it hereby is **ORDERED** that Defendant Narconon of Georgia, Inc.'s Answer to Plaintiff's first Complaint in this case hereby is **STRICKEN**.⁶

IT IS SO ORDERED, this 5th day of November, 2012.

Stacey K. Hydrick
HON. STACEY K. HYDRICK
STATE COURT OF DEKALB COUNTY

cc: Counsel of record, *via* e-mail
Clerk's File

FILED IN THIS OFFICE
THIS 5 DAY OF NOV 2012
Stacey K. Hydrick
Clerk, State Court, DeKalb County

⁶ This ruling encompasses only NNGA's Answer to the initial, May 19, 2010 Complaint and is not intended to address the allegations that were added by Plaintiffs' March 27, 2012 First Amended Complaint to Add Allegations and Claims.