

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 09-1285-JTM

\$ 754,100.00 IN UNITED STATES CURRENCY,  
*more or less,*

Defendant.

MEMORANDUM AND ORDER

This is a civil forfeiture action brought by the United States following its seizure, in a September 15, 2009 traffic stop, of the defendant \$754,100.00. On November 4, 2009, Inal Aaraj, for himself, and DEP Lounge, Inc., in its corporation status, filed claims to the defendant currency and answers to the complaint. DEP Lounge, is the only remaining claimant to the defendant currency. The matter is before the court on the motion of the United States to strike the claim and answer of DEP for its failure to litigate its claim, for its failure to obey the Court's orders concerning contacting the Court and providing the Court with needed information, and for its failure to obtain new counsel.

On May 28, 2010, the Court entered partial default against all persons, except Aaraj and DEP for their failure to defend or otherwise contest their interest in the defendant currency, if any. (Dkt. 30). On August 11, 2010, Aaraj withdrew his individual claim.

Both New Jersey and local counsel for DEP filed motions to withdraw from the action on December 4, 2012, indicating that Aaraj, as representative of DEP, failed to communicate with them. The court issued notice to Aaraj, then granted counsel leave to withdraw. The court and the United States sent notice of these events to Aaraj and DEP by mail, email and telephone voicemail.

On January 17, 2013, the Court scheduled a telephonic case management conference for February 5, 2013. Aaraj, as the sole principal for DEP, was ordered to provide the Court with a telephone number for the conference and be prepared to advise the court as to the hiring of new counsel for DEP. The government attempted to contact Aaraj by telephone and email, but was unsuccessful. The court held the telephonic conference, and neither Aaraj nor new counsel for DEP appeared.

As a corporation, DEP may present its claim only through representation by counsel. *Rivera Drilling v. Gunnison Energy*, 412 Fed. Appx. 89 at \*1 (10th Cir. 2011). Despite the repeated efforts of the court, their prior counsel, and the government to notify DEP, by and through Aaraj, of its need to appear and support its claim to the defendant currency, DEP has willfully failed to make such appearance.

IT IS ACCORDINGLY ORDERED this 13<sup>th</sup> day of February, 2013, that the government's motion (Dkt. 59) is hereby granted, and the Clerk is directed to strike Answer and Claim (Docs. 8 and 9) of DEP Lounge and directs that DEP shall no longer be a party to these proceedings. The government shall file promptly its motion for final default and forfeiture of the defendant property.

s/J. Thomas Marten  
J. THOMAS MARTEN, JUDGE