UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: September 15, 2010

Cancellation No. 92051558

Manhattan Construction Company

v.

Manhattan Skyline Construction Corp.

M. Catherine Faint,
Interlocutory Attorney:

On September 13, 2010 the Board held a telephone conference involving Jennifer B. Perry, counsel for Manhattan Construction Company, Robert G. Horowitz, counsel for Manhattan Skyline Construction Corp., and Interlocutory attorney Catherine Faint.

This case comes up on petitioner's contested motion for default for failure to file an answer, filed August 18, 2010. Respondent filed a response to the motion, together with its answer on August 31, 2010. When it filed its response, respondent also attached as exhibits copies of emails and a proposed settlement agreement that petitioner contends are confidential documents.[1] Petitioner argues that it has already admitted that there were extensions of time agreed to between

the parties for settlement negotiations prior to the filing of the motion for default, and thus petitioner moves that Exhibits 1-10 and 12 be stricken as irrelevant to this proceeding. In the alternative, petitioner moves that the documents be redacted. Respondent argues that Fed. R. Evid. 408 provides an exception for use of confidential documents, such as for negating a contention of undue delay.

In an abundance of caution, all of the documents in respondent's August 31, 2010 filing have been marked as confidential by the Board. Petitioner's motion to strike Exhibits 1-10 and 12 is denied. *See* Fed. R. Evid. 408. The motion to redact Exhibits 1-10 and 12 is granted. Respondent must file a copy of its August 31, 2010 motion redacting Exhibits 1-10 and 12, and file a copy of its answer (currently attached as Exhibit 13) under separate cover, **no later than September 17, 2010**.[2]

Turning next to respondent's response, the standard for determining whether default judgment should be entered against a defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, i.e., whether the defendant has shown good cause why default

[1] The Board notes that respondent has entered the wrong city, but the correct zip code, for petitioner in its certificates of service. Respondent should correct this for all future filings.
[2] Respondent also noted that it needed to correct certain paragraph or exhibit numbers referenced in its declaration. To the extent that respondent will be correcting typographical errors in its filing, it may do so.

judgment should not be entered against it. As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.,* 21 USPQ2d 1556, 1557 (TTAB 1991). The determination of whether default judgment should be entered against a party lies within the Board's sound discretion. In exercising that discretion, the Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer. See TBMP Section 312.02 (2d ed. rev. 2004).

The Board finds that respondent's delay in filing an answer was not the result of willful conduct or gross neglect, there is no indication that petitioner was prejudiced by respondent's failure to timely answer, and respondent has set forth a meritorious defense by way of the denials set forth in its answer. Accordingly, the motion for default is denied. Respondent's concurrently filed answer is accepted and made of record.

Conferencing, disclosure, discovery and trial dates are reset as set out below.[3]

[3] In discussing scheduling, respondent noted that it would not be available for a discovery conference on October 1, 2010. The parties discussed dates when they may be available prior to that date, and agreed to discuss a suitable date after this teleconference. The Board noted that the discovery conference may be held prior to the deadline date, and that extensions of

Deadline for Discovery Conference	**10/1/2010**
Discovery Opens	**10/1/2010**
Initial Disclosures Due	**10/31/2010**
Expert Disclosures Due	**2/28/2011**
Discovery Closes	**3/30/2011**
Plaintiff's Pretrial Disclosures	**5/14/2011**
Plaintiff's 30-day Trial Period Ends	**6/28/2011**
Defendant's Pretrial Disclosures	**7/13/2011**
Defendant's 30-day Trial Period Ends	**8/27/2011**
Plaintiff's Rebuttal Disclosures	**9/11/2011**
Plaintiff's 15-day Rebuttal Period Ends	**10/11/2011**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rules 2.l28(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

***

time after answer but prior to the discovery conference are rarely granted, and only after a showing of good cause.