

IN THE SUPREME COURT OF THE STATE OF NEVADA

NASSER KATTAN AND IMAD
KATTAN,
Appellants
vs.
SAM'S WEST, INC., D/B/A SAM'S
CLUB; WAL-MART STORES, INC.;
ALAN TIBOR PETO; AND ROBIN KIM
PETERSON,
Respondents.

No. 38080

FILED

SEP 13 2002

JANETTE R. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CLIFF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellants' complaint as a discovery sanction.¹ NRCP 37(d) authorizes the court to dismiss a party's action if the party fails to appear for his deposition or fails to respond to properly served written discovery requests. The court has discretion in deciding whether dismissal is a just sanction, but should generally utilize less drastic sanctions whenever possible.² A court's sanction of dismissal with prejudice must "be

¹Because Frank Gerrard Peterson was not served with process and was dismissed from this action, we direct the court clerk to correct the caption on this court's docket to conform with the caption above.

²GNLV Corp. v. Service Control Corp., 111 Nev. 866, 870, 900 P.2d 323, 325 (1995); Nevada Power v. Flour Illinois, 108 Nev. 638, 645, 837 P.2d 1354, 1359 (1992).

supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors."³

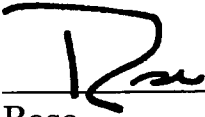
We have reviewed the record, and we conclude that the district court did not abuse its discretion in this case. The district court relied upon the discovery commissioner's report, which details appellants' complete failure to respond to written discovery requests, although they received the documents twice. Appellants also steadfastly refused to be sworn and answer questions at their depositions, which had been rescheduled after they failed to appear the first time. Appellants knew after respondents' first dismissal motion that they faced a harsh sanction if they refused discovery; yet, after respondents complied with the discovery commissioners' directions to reserve all written discovery and reschedule depositions, appellants again failed to respond and refused to participate.

Even after the second dismissal motion was filed, appellants still made no attempt to comply by answering the interrogatories and producing the requested documents. In the eight months between respondents' first discovery request and the discovery commissioner's recommendation to grant the second dismissal motion, respondents had done everything twice, and appellants had done nothing but delay and make excuses. Even though dismissal is harsh, it was not inappropriate

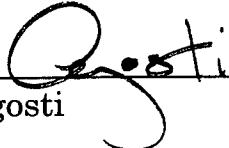
³Young v. Johnny Ribeiro Building, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990).

under the circumstances; appellants' noncompliance appeared willful and, although they commenced the adversarial process, their refusal to participate in discovery brought the process to an abrupt halt.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Eighth Judicial District Court Department 12, District Judge
Imad Kattan
Nasser Kattan
Lewis & Shreve, LLP
Clark County Clerk

⁴See GNLV Corp., 111 Nev. at 869, 900 P.2d at 325 (observing that discovery sanctions generally may only be imposed when there has been willful noncompliance with a court order or when the unresponsive party's actions have halted the adversarial process).