

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES F. KELLY,  
Appellant,

vs.

SAHARA NEVADA CORPORATION,  
D/B/A SAHARA HOTEL & CASINO, A  
NEVADA CORPORATION,  
Respondent.

No. 40786

**FILED**

AUG 11 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rinaldi*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment dismissing an action without prejudice pursuant to Eighth District Court Rule (EDCR) 2.90 – Dismissal for lack of prosecution.

This action was filed in the district court by appellant James F. Kelly in 1994 against Sahara Nevada Corporation, among others, for retaliatory discharge, bad faith and discrimination under the Equal Opportunities for Employment Statutes of NRS Chapter 613. In 1996, the district court dismissed the other defendants, granted Sahara Nevada Corporation's motion to compel arbitration, and stayed further proceedings in the district court. On May 22, 2002, the district court reactivated the case, held a status check and ordered appellant to initiate arbitration proceedings as soon as possible. The district court also ordered the action to be dismissed in six months if arbitration proceedings had not been initiated. On November 20, 2002, the district court held a status check, determined that no arbitration proceedings had been initiated, and ordered the case dismissed without prejudice under EDCR 2.90

The district court clearly put appellant on notice that it was his responsibility to initiate arbitration proceedings. In fact, the district court record reflects that before the district court's status check in May

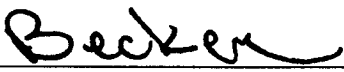
2002, no action had been taken in the case since a discovery conference in October of 2000, at which time the Discovery Commissioner reminded appellant of his responsibility to initiate arbitration proceedings. Nothing in the record indicates that appellant initiated arbitration proceedings, or that that he took any other action in the case for well over six months.

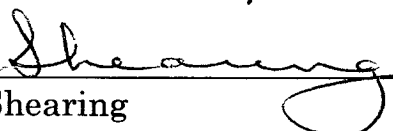
EDCR 2.90(a) provides:

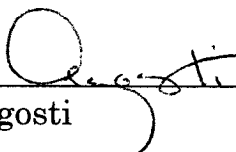
Any civil case which has been pending for more than 2 years and in which no action has been taken for more than 6 months may be dismissed, on the court's own initiative, without prejudice.

The district court was well within its discretion in dismissing this action in November 2002. Furthermore, the dismissal was without prejudice, so that appellant could have requested reinstatement pursuant to EDCR 2.90(c), which he failed to do. We therefore

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Becker

  
\_\_\_\_\_, Sr. J.  
Shearing

  
\_\_\_\_\_, Sr. J.  
Agosti

cc: Hon. Valorie Vega, District Judge  
James F. Kelly  
Jones Vargas/Reno  
Clark County Clerk