

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JENNA SOUTHWICK,

Plaintiff,

v.

Case No: 2:16-cv-625-FtM-29CM

PYSTMO, LLC and MARK
TAYLOR,

Defendants.

ORDER

This matter comes before the Court upon review of non-party mediator Denise H. Kennedy's Motion to Compel filed on April 13, 2018. Doc. 52. Ms. Kennedy seeks an Order compelling Defendants Pystmo, LLC and Mark Taylor—or alternatively, Defendants' counsel—to pay the fee for her mediation services. *Id.* For the reasons stated herein, the motion will be granted.

On May 13, 2017, the Court entered a Case Management and Scheduling Order ("CMSO") requiring the parties to mediate on or before December 1, 2017. Doc. 34. The parties agreed on a mediator, Denise H. Kennedy, Esq., from the Court's approved list of mediators. *Id.* On November 8, 2017, Plaintiff filed an Unopposed Motion for Extension of Mediation Deadline. Doc. 35. The Court granted the motion and extended the deadline to mediate to January 26, 2018. Doc. 36. Mediation was held on January 16, 2018, and the parties agreed to settle the case. Doc. 39.

Defendants agreed to pay for the entire cost of mediation, totaling \$1,225.00. Doc 52 at 1. Ms. Kennedy attempted to contact Defendants' attorney to request payment on multiple occasions via phone and received a voice message that the inbox was full. *Id.* Ms. Kennedy also attempted to reach Defendants' attorney via email, fax and mail to no avail. *Id.* at 1-2. On June 20, 2018, the undersigned directed Defendants to respond to Ms. Kennedy's Motion to Compel on or before June 27, 2018. Doc. 53. As of this date, despite the Court's Order, Defendants have failed to respond.

Ms. Kennedy specified in the mediation confirmation letter that her fees were \$350.00 per hour for two-party mediation and \$125.00 per hour per party for multi-party mediation, and the fees would be split equally between the parties, unless otherwise agreed upon. Doc. 52-2. She also stated payment was to be made within 30 days of receipt of the mediation invoice. *Id.*

The CMSO in this case states in relevant part:

The mediator shall be compensated as per M.D. Fla. R. 9.02(f), or at a rate stipulated by the parties in advance of mediation and borne equally by the parties. Upon motion of the prevailing party, the party's share may be taxed as costs in this action.

Doc. 34 at 7-8. Local Rule 9.02(f) states:

Absent agreement of the parties and the mediator, mediators shall be compensated at a reasonable hourly rate provided by order of the Court after consideration of the amount in controversy, the nature of the dispute, the resources of the parties, the prevailing market rate for mediators in the applicable market, the skill and experience of the mediator, and other pertinent factors. Unless altered by order of the Court, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.

M.D. Fla. R. 9.02(f).

Under the language of the CMSO, the Local Rules, and the mediation confirmation letter sent by Ms. Kennedy, Defendants were required to pay, at minimum, their half of the invoice totaling \$612.50. *See* Docs. 34 at 7-8, 52-2; M.D. Fla. R. 9.02(f). However, Ms. Kennedy represents Defendants agreed to pay the mediator's fee in full. Doc. 52 at 1. Further, Ms. Kennedy provided the Court with multiple exhibits in which she requested the full invoice amount of \$1,225.00 from Defendants; Defendants do not appear to have contested this amount, and they failed to respond to the motion. *See* Docs. 52-1, 52-2, 52-3.

A court in this district has granted a mediator's motion to enforce payment of mediator fees. *See Jackson v. Hobart Enters., Inc.*, No. 8:06-cv-1759-T-30MAP, 2008 WL 2439345 (M.D. Fla. June 13, 2008). In *Jackson*, the defendant was sent an invoice that represented his share of the mediation fees and failed to pay his share. *Id.* at 1. After failing to receive payment, the court-appointed mediator filed a motion to enforce payment of mediator's fees to which the defendant failed to respond. *Id.* Despite a court order requiring the defendant to respond to the mediator's motion, the defendant remained unresponsive. *Id.* The court thus granted the mediator's motion to enforce payment of the mediator's fees. *Id.*

A court in the Southern District of Florida similarly granted a motion to compel payment of mediator fees. *Edge Sys. LLC v. Aguila*, No. 14-24517-CIV-MOORE/MCALILEY, 2016 WL 4063830 (S.D. Fla. Mar. 31, 2016). In *Edge Systems*, the court relied on the language in an order directing the parties to mediate and a

mediator designation notice issued by the clerk, both of which explained the parties' liability regarding payment for the mediator's services. *Id.* at 1. Further, when the defendant stated the mediation lasted forty-five minutes rather than two hours as indicated by the mediator, the court relied on the mediator's invoice because defendant failed to offer a reason to disbelieve the mediator's statement. *Id.*

Here, similar to *Jackson* and *Edge Systems*, Defendants have failed to provide any reason to challenge Ms. Kennedy's assertion that Defendants are required to pay the invoiced amount. Defendants did not pay the balance within thirty days of receipt of the invoice, and they have been unresponsive to Ms. Kennedy and this Court. Further, because Defendants did not respond to the present motion or the Court's Order, the Court presumes the motion is unopposed. *See Freshwater v. Shiver*, No. 6:05-CV-756-ORL19DAB, 2005 WL 2077306, at *2 (M.D. Fla. Aug. 29, 2005).

ACCORDINGLY, it is

ORDERED:

1. Mediator Denise H. Kennedy's Motion to Compel (Doc. 52) is **GRANTED**. Denise H. Kennedy is awarded \$1,225.00, to be paid by Defendants on or before **August 10, 2018**.

2. In addition to the CM/ECF filing, the Court directs the Clerk to mail a copy of this Order to Defendants' counsel, Amie K. Dilla, at the address in the record.

DONE and **ORDERED** in Fort Myers, Florida on this 31st day of July, 2018.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record
Mediator Denise H. Kennedy