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Parties Sanctioned after Continued Noncompliance with Discovery

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Following the New York Court's recent July decisions, here is a notable reminder for attorneys and clients to comply with discovery.

In *Kuliarchar Sea Foods (Cox's Bazar) Ltd. V. Soleil Chartered Bank 654930/2017* the defendant found themselves subject to sanctions from New York County Supreme Court Judge Lebovits. Rather than produce for deposition an employee with knowledge of their operations and the matter at hand, the defendant produced an independent contractor who knew, other than the name of only one employee, seemingly nothing. What started as a lawsuit regarding the shipment of shrimp led to a "series of motions" regarding discovery-related disputes. Over a year prior to the decision in July, the court directed the defendant to produce a witness familiar with the structure and operations of the bank and able to fully answer the plaintiff's questions. However, after a year of the "defendants' longstanding and continuing failure in this action to comply with court orders," Judge Lebovits saw that sanctions were the best available option.

In *Shioya v. Hanah Country Inn Mgt. Corp.* the Appellate Division, Third Department, 533018, affirmed the Supreme Court's dismissal of the plaintiff's complaint for discovery violations that "evinced a pattern of [willful] noncompliance." The plaintiff's refusal to grant access to requested documents or assist the defendant with retrieving the documents invited motion practice. After granting the defendant's motion to comply in April 2019, and after the plaintiff's continued disregard of discovery requests and the court's instructions, Judge Lambert had had enough, granting the defendants' motions and striking the plaintiff's complaint along with other sanctions.

As lawyers, one of the first things we learned when we walked into our respective law schools was the importance of complying with court orders and that working with the other side can lead to a speedy resolution for all. The plaintiff in *Shioya* refused to "substantially comply" for over 17 months after the original conditional order, dragging the case on unnecessarily. Although there is a give and take within the discovery process, you must make sure that you do not take to the detriment of your client and their claims.

The courts decide how long of the leash to grant, but per Judge Lebovits in *Kuliarchar*, "striking a party's answer for failure to provide discovery is a drastic remedy, appropriate only when no lesser sanction will do. In this case ... any sanction short of striking the answer would likely be insufficient."

Let this be a reminder as you work through the arduous process of discovery to not shoot yourself (or your client) in the foot.