

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
VS.)	No. 2:06-cv-2383 JPM-dkv
)	
ATHLETES BUILDING BETTER)	
COMMUNITIES, LLC., d/b/a)	
ATHLETES FOOT,)	
)	
Defendant.)	

ORDER GRANTING VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff, the United States Equal Employment Opportunity Commission ("EEOC"), filed a Motion Requesting Voluntary Dismissal without Prejudice (DE # 26) on October 9, 2007. Plaintiff requests that this Court dismiss this case without prejudice, with the condition that the case can be re-filed by Plaintiff if property of Defendant is subsequently discovered from which creditors can be paid.

On June 29, 2007, Defendant filed a Chapter 7 bankruptcy case in the United States Bankruptcy Court for the Middle District of Tennessee. The Notice received by the EEOC from the bankruptcy court said not to file a proof of claim unless

notified later, because there did not appear to be any property available to the trustee to pay creditors.

On August 27, 2007, the Clerk entered a Default (DE # 22) in this lawsuit because Defendant is no longer represented by counsel and failed to appear at a hearing to defend through counsel. A Damages Hearing currently is set in this case for October 12, 2007.

Two of the alleged discrimination victims are now attending school in New Orleans, Louisiana and Jackson, Tennessee. The EEOC requests that the Court dismiss this case without prejudice to avoid additional expense, inconvenience, and potential emotional and psychological stress to these witnesses, who would need to appear at the Damages Hearing.

For good cause shown, this case is hereby dismissed without prejudice, and no attorney's fees or costs will be awarded. The damages hearing scheduled for October 11, 2007, at 9:30 a.m. is no longer necessary and is cancelled. This case can be re-filed by the EEOC if property of Defendant is subsequently discovered in the bankruptcy case from which creditors can be paid. A damages hearing can be held at that time.

SO ORDERED this 11th day of October, 2007.

/s/ JON P. McCALLA
UNITED STATES DISTRICT JUDGE