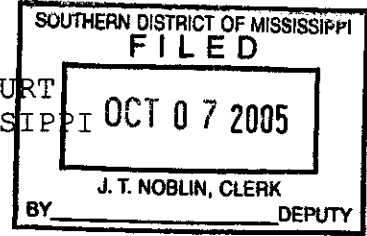


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



UNITED STATES OF AMERICA

PLAINTIFF

VS.

CIVIL ACTION NO. 4:05CV33LN

IKE BROWN, ET AL.

DEFENDANTS

ORDER

This cause is before the court on the motion of defendant Noxubee County Election Commission to set aside default judgment. Plaintiff United States of American has responded in opposition to the motion and the court, having considered the memoranda of authorities, together with attachments, submitted by the parties, concludes that the motion should be granted. Under Federal Rules of Civil Procedure 55(c) and 60(b), a district court may set aside an entry of default or default judgment for "good cause." "Three factors are examined for determining 'good cause' vel non: (1) whether the failure to act was willful; (2) whether setting the default aside would prejudice the adversary; and (3) whether a meritorious claim has been presented." Effjohn Intern. Cruise Holdings, Inc. v. A&L Sales, Inc., 346 F.3d 552, 563 (5th Cir. 2003). "These factors are not exclusive; instead, they are to be regarded simply as a means to identify good cause." Id. Here, the court is persuaded that the failure to timely file an answer was not willful, but rather

excusable. Moreover, there is no prejudice at all to plaintiff, and defendant submits it has a colorable defense. Though its argument on this latter point is hardly illuminating, the court nevertheless concludes that relief is in order, particularly given the Fifth Circuit's admonition that

federal courts should not be agnostic with respect to the entry of default judgments, which are "generally disfavored in the law" and thus "should not be granted on the claim, without more, that the defendant had failed to meet a procedural time requirement." Mason & Hanger--Silas Mason Co. v. Metal Trades Council, 726 F.2d 166, 168 (5th Cir. 1984). Thus, "where there are no intervening equities any doubt should, as a general proposition, be resolved in favor of the movant to the end of securing a trial upon the merits." [Gen. Tel. Corp. v. Gen. Tel. Answering Serv., 277 F.2d 919, 921 (5th Cir. 1960).]

Lacy v. Sitel Corp., 227 F.3d 290, 292 (5th Cir. 2000).

Based on the foregoing, therefore, it is ordered that the motion to vacate default judgment is granted.

SO ORDERED this 6th day of October, 2005.



UNITED STATES DISTRICT JUDGE