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CUYAHOGA FALLS  
OHIO  
IN THE CUYAHOGA FALLS MUNICIPAL COURT  
SUMMIT COUNTY, OHIO

AKRON METROPOLITAN HOUSING	)	CASE NO. 91 CVG 840
AUTHORITY	)	
	)	
Plaintiff	)	
	)	
vs	)	
	)	
SHARON MITCHELL	)	
	)	
Defendant	)	<u>REFEREE'S REPORT</u>

\* \* \* \* \*

The within matter came on for hearing on the defendant's motion for relief from the judgment entered in this action on April 23, 1991.

The record of the cause reveals that a complaint in forcible entry and detainer was filed on March 22, 1991; service of summons being effected on April 9, 1991. On the scheduled hearing date of April 22, 1991, the defendant was not present, so the trial proceeded in her absence. At such time, it was recommended that a judgment of restitution issue due to the defendant's non-payment of rent from January of 1991 pursuant to a lease between the parties; the recommendation subsequently becoming the judgment of the court on April 23, 1991. The within motion for relief from judgment was filed on May 22, 1991; the defendant alleging that she is entitled to relief

on the grounds of inadvertence or excusable neglect.

At the within hearing, the parties stipulated that the affidavit of the defendant accompanying her motion for relief from judgment would be accepted as her testimony in support of such motion. The same reveals that she was ten minutes late for the forcible entry and detainer trial because of difficulty in arranging transportation; the defendant not owning an automobile. Upon her arrival at the court, she sat in the courtroom to which she was directed (the same being unknown), and was asked, some 40 minutes later, the reason for her presence. It was at such time that she first learned that the trial had proceeded in her absence. The affidavit also reveals that she was given an extension until January 14, 1991, to pay January's rent; that she went to the plaintiff's office on such date to get a rent statement in order to allow her to pay the rent (Mitchell having the rent money at such time), and found the office closed. Upon returning to the office on the following day in an effort to get the statement, she was refused such statement, and was informed that she was going to be evicted.

In order for a party to prevail on a motion for relief from judgment made pursuant to Civ. R. 60(B), it is necessary for the movant to demonstrate that such party has a meritorious defense to present if the motion is granted; that the movant is entitled to relief under one of the grounds enumerated in the rule; and that the motion be made within a reasonable time. GTE Automatic Electric, Inc. v. ARC Industries, Inc., 47 Ohio

St. 2d 146, 1 Ohio Op. 3rd 86 (1976). It is found that the subject motion was filed within a reasonable time; the same being forthcoming within one month of the date of judgment. It would also appear that the defendant has established an arguably meritorious defense to present if the subject motion should be granted; such party having been granted an extension of time within which to pay rent, and her attempts to pay rent within such period being frustrated by the plaintiff's closed office. The final item for resolution is that respecting the ground for relief. After due deliberation, it is found that the defendant has not established either inadvertence or excusable neglect. Her late arrival, although due to her transportation problem, does not establish either ground. Knowing of a transportation problem, it was her responsibility to take steps to ensure her prompt arrival. However, the circumstances render appropriate relief pursuant to Civ. R. 60(B)(5); a provision affording relief in the interest of substantial justice. . . . Antonopolous v. Eisner, 30 Ohio App. 2d 187, 193, 59 Ohio Op. 2d 309 (Ct. App. Cuyahoga County 1972).

Accordingly, in light of the above, it is recommended that the defendant's motion for relief from judgment be granted; that the judgment of restitution of April 23, 1991, be vacated and held for naught; and that the matter be scheduled for trial.

  
STEVEN J. SCHWARTZ, Referee

cc: Virginia Robinson, Attorney for Plaintiff  
James Brown, Attorney for Defendant  
File