

DECISION AND ORDER

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Grimes v. Meehan, 2004 NSSM 17**

BETWEEN:

Name: KATHLEEN GRIMES

- CLAIMANT

Name: MARK MEEHAN

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 8, 2007.

- DEFENDANT

DATE OF HEARING: April 5, 2004

DECISION

- [1] Mark Meehan makes application to set a default order made against him after a hearing on March 22nd. The matter had first proceeded on March 1, 2004. Mr. Meehan did not show up and the court heard evidence in his absence. Ms. Grimes, her counsel, and her witnesses left. Mr. Meehan appeared a short time later explaining he had been waiting in the wrong court. The court advised him that it would grant him a new hearing and advised him to contact the court office to obtain a new date. The court office set the matter down for March, 22. Ms. Grimes, her counsel, and her witnesses appeared on March 22. Mr. Meehan did not. The court granted Ms. Grimes an order.
- [2] Mr. Meehan made application on April 5, 2004 to set aside the order. The application is made under section 23 (4) of the *Small Claims Court Act* which provides:
- Where a defendant against whom an order has been made pursuant to subsection (3) appears, upon notice to the

claimant, before the adjudicator who made the order and the adjudicator is satisfied that

(a) the defendant has a reasonable excuse for not appearing at the hearing; and

(b) the defendant appeared before the adjudicator without unreasonable delay after learning of the order, the adjudicator may set aside the order and set the claim down for hearing.

[3] Mr. Meehan acknowledged that he had received a registered mail card for “a parcel” on March 15. The card advised he could pick up the mail at a Lawton’s Drug Store. He was working nights. He said he could not get to the Lawton’s until the 28th and by that time the hearing had been held and the order issued. He said the court office had said it would call him to advise of the date.

[4] The issue is whether this is “a reasonable excuse for not appearing”. I find that it is not. The March 22nd hearing was held to accommodate Mr. Meehan. The March 22 hearing was three weeks after the date first set. It was incumbent upon Mr. Meehan to know or find out the date of the hearing rescheduled for him. He ignored the registered mail card. A registered letter is not something to be ignored. Furthermore Mr. Meehan ought to have realized, in my view, that the registered mail might well relate to the new hearing date he sought.

ORDER

[5] I dismiss the application and confirm my order.

Dated at Halifax, Nova Scotia
this 8th day of April, 2004.

J. WALTER THOMPSON, Q.C.
ADJUDICATOR

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