

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 Sixth Street P.O. Box 4249, Boulder, CO, 80306-4249	DATE FILED: November 22, 2016 1:43 PM CASE NUMBER: 2016CV31016 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) INTERNATIONAL ASSOCIATION OF CERTIFIED H v. Defendant(s) NATIONAL ASSOCIATION OF HOME INSPECTORS	
Order: Intervenor American Society of Home Inspectors Notice Regarding Opposition to Default Judgment and Motion for the Court to Set a Briefing Schedule Pursuant to C.R.C.P. 121 Sec. 1-15(a) upon InterNACHI Filing a Motion for Default Judgment	

The motion/proposed order attached hereto: DENIED.

Issue Date: 11/22/2016



THOMAS FRANCIS MULVAHILL
 District Court Judge

DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6 th Street, Boulder, CO 80302 (303) 441-3750	
Plaintiffs: International Association of Certified Home Inspectors v. Defendant: National Association of Home Inspectors and Intervenor: American Society of Home Inspectors	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Intervenor American Society of Home Inspectors :</i> Geoffrey N. Blue, Atty. Reg. No. 32684 Klenda Gessler & Blue, LLC 1624 Market St., Suite 202 Denver, Colorado 80202 (720) 432-5705 Tel Email: gblue@klendagesslerblue.com	Case No. 16 CV 31016 Div.:
Intervenor American Society of Home Inspectors' Notice Regarding Opposition to Default Judgment and Motion for the Court to Set a Briefing Schedule Pursuant to C.R.C.P. 121 § 1-15(a) upon InterNACHI Filing a Motion for Default Judgment	

<p><u>C.R.C.P. 121 Section 1-15 Conferral Certificate</u></p> <p>Undersigned counsel has conferred with Plaintiff's counsel, who opposes the relief sought by the Society in this filing.</p>
--

1. On September 13, 2016, InterNACHI initiated this action against the Defendant National Association of Home Inspectors (“NAHI”).

2. Both InterNACHI and NAHI are non-profit associations whose members are independent professional home inspectors.

3. NAHI has halted all operations, it has encouraged its members to transfer their memberships to the American Society of Home Inspectors (the “Society”), and is effectively defunct.

4. On or about October 14, 2016, the Society moved to intervene in this matter and filed an answer with affirmative defenses on October 17, 2016. The Court granted the Society intervenor status to defend against this action on November 9, 2016.

5. On or about October 24, 2016, the undersigned counsel entered his limited appearance on behalf of NAHI under C.R.C.P. 121, Section 1-1 (5) for the sole purpose of seeking an extension of time for NAHI to respond to the Complaint, and filed a motion on behalf of NAHI seeking an extension through and including today, November 21, 2016, for NAHI to file its response to Plaintiff’s Complaint. The Court granted that motion on October 27, 2016.¹

6. To date, the undersigned has not been retained by NAHI to defend it in this action. The Society expects NAHI will not file a responsive pleading today, and that InterNACHI will file a motion for default judgment in response to NAHI’s failure to respond to the Complaint. InterNACHI has already asserted to this court that the Society “cannot prevent Plaintiff from seeking a default judgment against NAHI,”² and informed the undersigned that it opposes the relief sought in this Motion.

¹ See Order re: Defendant National Association of Home Inspectors Motion for Extension of Time to Answer or Otherwise Plead, Oct. 27, 2016.

² Plaintiff’s Response to ASHI’s Motion to Intervene, ¶. 2, p. 1, Nov. 8, 2016.

7. The Society intervened in this case to protect its interests by preventing InterNACHI from obtaining a default judgment against NAHI based on allegations that included alleged wrongdoing by the Society.³ Courts have allowed parties to intervene for this specific purpose.⁴ By granting the Society intervenor status to defend its interests in this action, the Court recognized that the Society has an interest in preventing InterNACHI from obtaining a default judgment against NAHI.

8. The Colorado Rules of Civil Procedure allow the clerk to enter a default judgment upon an application by a party.⁵ However, when a party against whom a default judgment is sought has appeared in the action, the court is to set a hearing date and the moving party must give 7-day written notice of the hearing on the request for default judgment.⁶ The Society intervened in this case specifically to protect its interests against InterNACHI's allegations of wrong doing, and an intervenor stands in the shoes of the party on whose side the intervenor joins the matter.⁷ Accordingly, it's not clear whether the clerk would enter an order administratively or would set this matter for hearing.

9. If the clerk enters default judgment administratively or the Court refuses to permit the Society to oppose a motion for default judgment and to defend the allegations against it, the Court would be frustrating the purpose of the Society's intervention and would be contradicting its own order granting the Society intervenor status.

³ Motion to Intervene, ¶¶20 and 21, pp. 5-6, Oct. 14, 2016.

⁴ *Security Ins. Co. of Hartford vs. Schipporeit, Inc.*, 69 F.3d 1377, 1380-81 (7th Cir. 1995).

⁵ Colo. R. Civ. P. 55(a).

⁶ Colo. R. Civ. P. 55(b).

⁷ *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) (“intervenor stands in plaintiff's shoes”).

FOR THESE REASONS, the court should grant the Society's motion and inform the clerk not to enter a default judgment administratively if InterNACHI files a motion for default judgment and, upon that filing, enter a briefing schedule pursuant to Colo. R. Civ. P. 121 § 1-15(a) and grant all such further relief as is just, proper, and/or appropriate.

Respectfully submitted this 21st day of November 2016,

American Society of Home Inspectors

Klenda Gessler & Blue, LLC

s / Geoffrey N. Blue

Geoffrey N. Blue

Attachment to Order - 2016CV31016

CERTIFICATE OF SERVICE

I certify that on this 21st day of November 2016, the foregoing **Intervenor American Society of Home Inspector's Notice Regarding Opposition to Default Judgment and Motion for the Court to Set a Briefing Schedule Pursuant to C.R.C.P. 121 § 1-15(a) upon InterNACHI filing a Motion for Default Judgment** was electronically served via ICCES on the following:

Mark Cohen
P.O. Box 19192
Boulder, CO 80308
Attorney for Plaintiff

By: s/ Joanna Bila
Joanna Bila, Paralegal

Attachment to Order - 2016CV31016