

District Court of Appeal of Florida,  
Third District.

Taleb ATALA, Artistic Dyeing and Printing,  
Inc., National Print and Dye Works, Inc., and  
Galloway Textiles, Appellants,

v.

Joseph KOPELOWITZ, Appellee.  
**No. 95-1756.**

Dec. 20, 1995.

As sanction for defendants' failure to make properly noticed discovery or to acquire new counsel within time certain, as had been ordered by court, the Circuit Court, Dade County, Jon Gordon, J., entered order striking defendants' pleadings and entering default against defendants. Defendants appealed, the District Court of Appeal, held that trial court erred in making ultimate sanction of default as court had failed to issue order properly notifying defendants of consequences of failure to perform acts and lesser sanctions would have sufficed to ensure compliance with court's order and rules of procedure for discovery.

Reversed and remanded with directions.

\***1157** Merrill & Pollack and Gary W. Pollack, Coral Gables, for appellants.

Curtis & Curtis and Bruce Botsford, Ft. Lauderdale, for appellee.

Before BARKDULL, LEVY and GREEN, JJ.

PER CURIAM.

We find error in a trial court order striking the defendants' pleadings, and entry of a default against the defendants, as a sanction for failure to make properly noticed discovery, or to acquire new counsel within a time certain ordered by the court, because the trial court failed by order to properly notify the defendants of the consequences of the failure to do the above referred to particular acts. Under the circumstances, the ultimate sanction of default was too harsh a penalty as lesser sanctions would suffice to ensure compliance with the court's order and the rules of procedure for discovery. In addition, the appellee has not demonstrated prejudice. Accordingly, we reverse

the order and remand with directions to the trial court to impose less severe sanctions. See Owens v. Howard, 662 So.2d 1325 (Fla. 2d DCA 1995); Klein-schmidt v. Gator Office Supply & Furniture, Inc., 551 So.2d 515 (Fla. 3d DCA 1989), review denied, 560 So.2d 233 (Fla.1990); Bieling v. E.F. Hutton & Co., 522 So.2d 878 (Fla. 2d DCA 1988), review denied, 531 So.2d 1352 (Fla.1988).

Reversed and remanded with directions.