

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant

PLAINTIFF'S MOTION TO DISMISS PURSUANT TO RULE 41(a)(2)

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court for an order dismissing this action without prejudice, subject to the conditions that: (a) plaintiff may move for an award of attorney's fees and litigation costs, and (2) plaintiff may seek payment of consultation fees.

This motion is made pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure.

A Memorandum of Points and Authorities and a proposed Order are attached hereto.

Respectfully submitted,

LESAR

2101 L Street, N.W., Suite 203 Washington, D.C. 20037 Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of July, 1981, mailed a copy of the foregoing Motion to Dismiss Pursuant to Rule 41(a)(2) to Mr. William G. Cole, Attorney, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1996

U.S. DEPARTMENT OF JUSTICE,

Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

In discussing the standard for volantary dismissal under Rule 41(a)(2) the court in <u>Harvey Aluminum, Inc. v. American</u> <u>Cyanamid Co.</u>, 15 F.R.D. 14, 18 (S.D.N.Y. 1953) said:

> The essential question is whether the dismissal of the action will be unduly prejudicial to the defendants; . . . As a general rule, a litigant should be permitted to discontinue his action upon appropriate terms even where his avowed purpose is to commence a new litigation upon the same issues in a forum allegedly more favorable to his claim.

The standard of prejudice was further defined in <u>Le Compte v. Mr.</u> <u>Chip Inc.</u>, 528 F.2d 601 (5th Cir. 1976), where it was held that "in most cases a dismissal should be granted unless the defendant will suffer some <u>legal</u> harm." (Emphasis added)

Voluntary dismissal is approprite in this case. Dismissal will not be "unduly prejudicial" to defendant, and no "legal" harm whatsoever will result from the dismissal.

Accordingly, plaintiff's motion for voluntary dismissal should be granted.

Respectfully submitted,

LESAR Η.

2101 L Street, N.W., Suite 203 Washington, D.C. 20001 Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

v.

Plaintiff,

Civil Action No. 75-1990

U.S. DEPARTMENT OF JUSTICE

Defendant

ORDER

Upon consideration of plaintiff's motion for voluntary dismissal of this action, defendant's opposition thereto, and the entire record herein, and the Court having determined in the exercise of its discretion that dismissal upon the terms and conditions sought by plaintiff is proper, it is by the Court this _____ day of _____, 1981

ORDERED, that this action is hereby dismissed without prejudice, subject to the conditions that plaintiff may (a) file a motion for an award of reasonable attorney's fees and costs incurred in this action, and (b) renew his motion for an order requiring defendant to pay consultation fees.

UNITED STATES DISTRICT COURT