

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG)
Plaintiff)
v.) Civil Action No. 75-1996
U. S. DEPARTMENT OF JUSTICE)
Defendant)

FILED

MAY 19 1982

MEMORANDUM ORDER

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

This action is before the Court on defendant's motion for a protective order. Defendant urges this Court to stay the two depositions noted by plaintiff until the Court rules on plaintiff's motion to compel payment of consultancy fee. The Court denies defendant's motion. The depositions of Ms. Lynn Zussman and Mr. Daniel Metcalfe are highly relevant to the determination of plaintiff's motion.

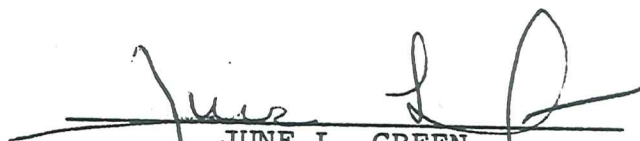
On December 1, 1981, as part of its disposal of this action, the Court granted plaintiff's motion for an order requiring defendant to pay consultancy fee. At a status conference on February 16, 1982, defendant requested and the Court directed plaintiff to file a motion to compel payment of a sum certain. Defendant then opposed plaintiff's motion. Defendant argued that no contract was formed, that if one was formed, it is unenforceable, and that if it is enforceable, exclusive jurisdiction rests with the Court of Claims pursuant to 28 U.S.C. § 1346(a)(2).

Plaintiff contends that this Court has jurisdiction to order payment under the fee provision of the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(E), and the Court's "general equitable powers." In this case, the jurisdictional challenge is inseparable from plaintiff's assertion of jurisdiction. Plaintiff is therefore entitled to take the depositions of Ms. Zussman and Mr. Metcalfe to address

defendant's jurisdictional challenge and other objections. See Investment Properties International v. Ios, 459 F.2d 705 (2d Cir. 1972). Indeed, the Court suggested to defendant at the status call on February 16, 1982 that Ms. Zussman's testimony be obtained. Defendant having failed to do so, plaintiff is entitled to depose Ms. Zussman and her former colleague, Mr. Daniel Metcalfe.

In accordance with the above, upon consideration of plaintiff's motion for an order designating Frederick, Maryland as place of taking the Zussman deposition, defendant's opposition and motion for a protective order, plaintiff's opposition thereto, and the entire record in this action, it is by the Court this 18th day of May 1982,

ORDERED that defendant's motion for protective order is denied with the exception that the Court designates Ms. Zussman's office as the place for her deposition.


JUNE L. GREEN
U. S. DISTRICT JUDGE