

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 78-0249

CLARENCE M. KELLEY, ET AL.,

Defendants.

DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION
AND CLARIFICATION

Plaintiff has submitted a rather disjointed and sometimes incoherent motion asking, inter alia, that the Court make certain "findings of fact". Plaintiff cites Schwartz v. Internal Revenue Service, 511 F.2d 1303 (1975), as authority for his request. Plaintiff sets forth certain allegations that he desires the Court to hold as "findings of fact".

Defendants submit that Rule 52(a) of the Federal Rules of Civil Procedure make "findings of fact" unnecessary when a decision is made on a motion pursuant to Rules 12 or 56. Indeed, Schwartz, does not stand for the proposition that "findings of fact" should be made in matters such as the instant one. Schwartz should not be given a broad application, it should be limited to the situation that existed in that particular case. In Schwartz the Court's one page order did not adequately explain its conclusions of law; but in the instant matter the Court has set forth in some detail the bases for its conclusions.

Furthermore, the Court in Schwartz does not direct the District Court to make findings of fact, the Court stated:

. . . it would appear advisable to require the District Courts to explicitly state the legal basis for finding documents exempt from disclosure under the FOIA,

Defendants submit that the Court has explicitly stated the legal bases for granting defendants summary judgment.

It is important to note that the Court in Schwartz did not state that clarification was necessary in every FOIA case, but only in those instances where circumstances so dictate. As the Court stated:

More importantly, Rule 52(a) simply removes the obligation to make "findings of fact and conclusions of law" in the unexceptional case; it in no way prohibits greater elaboration should the circumstances require it.

The present circumstances do not require further elaboration since the Court has already detailed the bases of its conclusions of law.

The issues presented by this Freedom of Information Act ("FOIA") lawsuit have been the subject of intense scrutiny, extensive discussion, and elaborate documentation by all parties to the suit and by the Court.

The record reflects that over the course of this litigation the Government filed several detailed affidavits in support of its legal justifications for withholding information under the FOIA. Plaintiff, in turn, filed several affidavits through which plaintiff sought to challenge defendant's legal positions. Finally, these issues were exhaustively discussed and probed by counsel and the Court during oral argument.


It is clear that the Court had before it in this action an extraordinary wealth of information and that it undertook great pains to consider all available information

in reaching its well-reasoned decision. Now, plaintiff seeks through a motion for "reconsideration and clarification," as accompanied by yet another "supporting affidavit" and related documentation, to once again litigate the issues which have been amply reviewed and decided.

In response, defendant can only observe that the matters contained in plaintiff's motion are at the same time both stale and well past due -- there is nothing contained therein which either has not been raised, addressed, and considered by the Court or which could not have been presented during the vigorous litigation prior to final adjudication. Defendant considers the Court's decision in this case to be both well-supported by the record and well-supported on its face. Certainly, nothing in plaintiff's motion or supporting materials compels persuasively to the contrary.

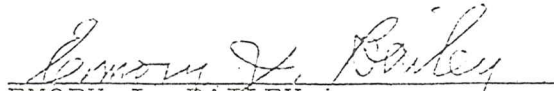
For the above reasons, defendant respectfully requests that plaintiff's motion for reconsideration and clarification be denied.

Respectfully submitted,


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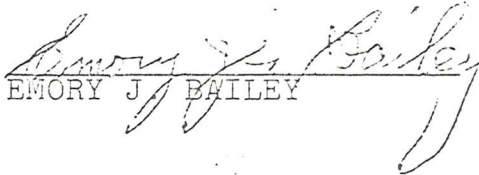
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing Defendants' Opposition to Plaintiff's Motion for Reconsideration and Clarification upon plaintiff by depositing a copy thereof in the United States mail, first class, postage prepaid to:

James H. Lesar
910 Sixteenth Street, N.W.
No. 600
Washington, D.C. 20006

this 22nd day of March, 1979.


EMORY J. BAILEY

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FOR THE
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ORDER

Upon consideration of plaintiff's "Motion for Reconsideration and Clarification Pursuant to Rules 52(b) and 59 of the Federal Rules of Civil Procedure," of the papers filed by the respective parties in support thereof and in opposition thereto, and of the entire record herein, and it appearing to the Court that the denial of plaintiff's motion would be just and proper, it is by the Court this _____ day of March, 1979,

ORDERED that plaintiff's motion be, and it hereby is, denied.

UNITED STATES DISTRICT JUDGE