

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1107  
(C.A. No. 75-226)

HAROLD WEISBERG,

Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Appellees.

OPPOSITION TO APPELLANT'S MOTION  
FOR AN AWARD OF ATTORNEY'S FEES

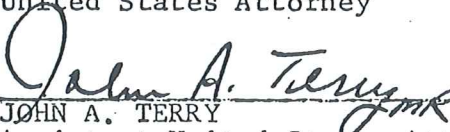
Appellees respectfully oppose appellant's motion for an award of attorney's fees of \$ 500 for time expended to secure payment of the bill of costs of \$ 693.81 awarded by this Court on June 6, 1980.

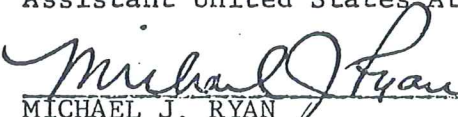
Again, as we pointed out in our opposition to appellant's motion for an order to show cause, filed November 6, 1980, it is clear that jurisdiction over this case has been transferred back to the District Court with transmittal of the judgment in lieu of mandate on June 6. Thus this Court is without jurisdiction to entertain appellant's complaints over either the delay in payment of the bill of costs or appellant's request for attorney's fees. Significantly, appellant's motion cites no authority for such an interim award of attorney's fees in a Freedom of Information Act case, and we submit that there is none. The FOIA, 5 U.S.C. § 552 (a)(4)(E), provides that the court may assess reasonable attorney's fees in a case in which the complainant has substantially prevailed. Accordingly, if appellant is in the position of having

substantially prevailed at the ultimate conclusion of this case, he may seek an award of attorney's fees. In the meantime, his unfounded suggestion that the delay in payment of the bill of costs can be attributed to improper motives on the part of the Government provides absolutely no basis for such an award.

WHEREFORE, appellees respectfully request that appellant's motion for an award of attorney's fees be denied.

  
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CHARLES F.C. RUFF  
United States Attorney

  
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JOHN A. TERRY  
Assistant United States Attorney

  
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MICHAEL J. RYAN  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing opposition to appellant's motion for an award of attorney's fees was mailed to counsel for appellant, James H. Lesar, Esquire, 2101 L Street, N.W., Suit 203, Washington, D.C. 29037 on this 24th day of November 1980.

  
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MICHAEL J. RYAN  
Assistant United States Attorney