

3/15/83

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action Nos.
78-322 and 78-420
(Consolidated)

DEFENDANT'S MOTION FOR AN ORDER
COMPELLING DISCOVERY

Defendant, by its undersigned attorneys, hereby moves the Court, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, to compel plaintiff to answer its interrogatories and request for production of documents. Defendant also moves the Court to assess against plaintiff and his counsel the reasonable expenses, including attorney's fees, incurred in obtaining the requested order.

In support of this motion, the Court is referred to the attached Memorandum of Points and Authorities.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney

Barbara L. Gordon/lsh
BARBARA L. GORDON

A/K

HENRY V. LaHAIE

Attorneys, Department of Justice
Room 3338, Civil Division
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 633-4345

Attorneys for Defendant.

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DEFENDANT'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS
MOTION FOR AN ORDER COMPELLING DISCOVERY

On October 26, 1982, the Court denied defendant's motion for partial summary judgment on the question of whether the FBI's search in these consolidated cases was adequate, and in so doing suggested several points on which discovery may be necessary in order to resolve that question. Given that suggestion by the Court, the defendant propounded a set of fourteen interrogatories on December 6, 1982, that was designed to ascertain the factual bases for plaintiff's claims that the Bureau's search was inadequate. The defendant also propounded a request for production of documents which merely required the plaintiff to produce for copying any documents identified in his answers to defendant's interrogatories.

Having first moved for a two-week extension of time to respond to defendant's discovery requests, plaintiff filed a motion for protective order on January 17, 1983, which sought to have those requests "vacated and set aside." The defendant opposed that motion on January 27, 1983. On February 4, 1983, the Court denied plaintiff's motion for protective order and directed

him to answer defendant's interrogatories and request for production of documents by February 24, 1983.

On February 22, 1983, plaintiff's counsel filed a motion for another two-week extension of time to respond to defendant's discovery requests. In that motion, counsel represented, inter alia, that he and his client needed additional time to complete the responses. However, on March 8, 1983, counsel filed blanket objections to all of defendant's interrogatories, as well as the request for production of documents. Significantly, those objections simply restated the arguments that plaintiff had advanced in support of his motion for a protective order.

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Because the defendant addressed those arguments in its opposition to plaintiff's motion for a protective order and because the Court rejected those arguments in denying plaintiff's motion, the defendant believes it unnecessary to further burden the record with a repetition of its earlier opposition. The defendant reiterates, however, that its discovery requests are designed merely to ascertain the bases for plaintiff's claims that the FBI's search was inadequate. Inasmuch as those requests relate exclusively to the facts and/or documents which form the core of plaintiff's claims as to the alleged inadequacy of the search, his renewed assertions of burdensomeness, harassment, irrelevancy, etc., should again be rejected. Moreover, as was pointed out in defendant's opposition to the protective order motion,*/ the disingenuousness of plaintiff's assertions is

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*/ See pp. 3-13 of Defendant's Opposition to Plaintiff's Motion for a Protective Order, filed on January 27, 1983.

further

underscored by his repeated attempts in this litigation to avoid articulating precisely the bases for his complaints about the adequacy of the FBI's search. In the face of the Court's Order of February 4, 1983, the instant objections to defendant's discovery are but another attempt by plaintiff to keep his complaints obscure and thus unassailable. This latest obfuscating tactic by plaintiff should not be countenanced.

In light of plaintiff's and his counsel's implicit defiance of the Court's Order of February 4, 1983, the defendant requests -- pursuant to Rule 37(a)(4) of the Federal Rules of Civil Procedure -- that the Court assess against plaintiff and his counsel the reasonable expenses, including attorney's fees, incurred by the defendant in prosecuting this motion. See Addington v. Mid-American, 77 F.R.D. 750 (E.D. Mo. 1978); Wright & Miller, Federal Practice and Procedure: Civil § 2288. Such an assessment would clearly facilitate Rule 37's purpose "to deter the abuse implicit in carrying or forcing an [unnecessary] discovery dispute to court." Advisory Committee's Notes, 48 F.R.D. 487, 540 (1970). See also 4A Moore's Federal Practice, ¶ 37.02 [10-1] at 37-49 (1975).

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CONCLUSION

For the reasons set forth above and in its earlier Opposition to Plaintiff's Motion for Protective Order, the defendant's motion to compel should be granted and plaintiff should be ordered again to answer defendant's interrogatories and request for production of documents. Also, plaintiff and his counsel should be assessed

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the reasonable expenses, including attorney's fees, which were incurred by the defendant in prosecuting this motion.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney

Barbara L. Gordon/JL

BARBARA L. GORDON

Henry J. LaHaise

HENRY J. LAHAIE

Attorneys, Department of Justice
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ORDER

Upon consideration of defendant's motion for an order compelling discovery, plaintiff's opposition thereto, and the entire record herein, the Court finds that the motion should be granted. The Court also finds that plaintiff and his attorney should pay defendant the reasonable expenses incurred in obtaining this order. It is therefore,

ORDERED and ADJUDGED that defendant's motion for an order compelling discovery be, and the same is hereby, GRANTED.

It is further ORDERED that plaintiff shall file responsive answers to defendant's interrogatories and requests for production of documents within fifteen (15) days from the date of this Order.

It is further ORDERED that the defendant shall submit an affidavit or other documentation within fifteen (15) days from the date of this order, detailing the expenses, including attorney's fees, which were incurred in obtaining this order. Plaintiff shall have ten (10) days to respond to that documentation at which

point the Court will assess against plaintiff and his counsel what it determines to be reasonable expenses.

It is so ordered. Dated this _____ day of _____,
1983.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 1983, I have served the foregoing Defendant's Motion for an Order Compelling Discovery, Memorandum of Points and Authorities In Support Thereof, and a proposed Order, by first class mail to:

James H. Lesar, Esq.
Suite 900
1000 Wilson Boulevard
Arlington, Virginia 22209


HENRY J. LaHAIE