

12/2/83

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 APPLICATION FOR EXPENSES
INCURRED IN PROSECUTING ITS DISMISSAL
MOTION UNDER RULE 37(b)(2)

On May 18, 1983, the defendant filed a motion to have these consolidated cases dismissed under Rule 37(b)(2), F.R.Civ.P., as a sanction against plaintiff for his willful refusal to comply with this Court's discovery Orders of February 4 and April 13, 1983. The defendant also moved the Court to assess against plaintiff and his counsel the reasonable expenses, including attorney fees, that it incurred in prosecuting the dismissal motion.

After conducting a hearing on those motions on November 9, 1983, the Court entered an Order on November 18, 1983, which, inter alia, granted the defendant's dismissal motion. The Court also directed the defendant in that Order to submit documentation within 15 days detailing the expenses, including attorney fees, which were incurred in prosecuting that motion.

Pursuant to that directive, the defendant is hereby filing the affidavit of Henry I. LaHaie, a trial attorney with the Justice Department's Civil Division, who has been primarily responsible for representing the defendant in this litigation, including the prosecution of the defendant's dismissal motion under Rule 37(b). In that affidavit, Mr. LaHaie states that he spent a total of 19.75 hours in prosecuting the dismissal motion.¹

The amount of compensation which defendant asks for Mr. LaHaie's time is \$53 per hour.² Although the "prevailing rate" in this area is much higher for an attorney with Mr. LaHaie's experience,³ defendant seeks the \$53 amount since that is what it requested (and was granted) in its last application for expenses in these consolidated cases.⁴

The only other costs the defendant seeks are the expenses for duplicating its Rule 37(b) motion and the memoranda in support of that motion. At 10¢ per page, that amounts to \$6.80

¹ The defendant does not seek fees for the time spent by counsel in the FBI's Office of Legal Counsel who reviewed all the pleadings prior to filing and who conferred with Mr. LaHaie about those pleadings' contents.

² As noted in defendant's previous application for expenses, the \$53 sum takes into account Mr. LaHaie's salary and the salaries of his supervisors, as well as support personnel and overhead costs.

³ For example, in a submission in another case, plaintiff's counsel indicated that he "currently charges \$85 per hour for non-FOIA work in which he is not an expert and has no prior experience." See Plaintiff's Motion for Attorney Fees and Litigation Costs at p. 22, filed on August 23, 1982, in Weisberg v. U.S. Department of Justice, C.A. No. 75-1996 (D.D.C.).

⁴ See Defendant's Application For Expenses Incurred In Obtaining The Order Compelling Plaintiff To Answer Its Discovery Requests filed on April 25, 1983; and, the Order entered by the Court on April 28, 1983.

(i.e.,) 4 copies -- 2 copies to the Court, one to opposing counsel and one for the defendant -- of 17 pages each).

Thus, the total amount of expenses that defendant seeks for prosecution of its dismissal motion is \$1053.55. This is an entirely reasonable sum, especially given what other attorneys -- including plaintiff's counsel -- would charge in a similar situation and given plaintiff's and his counsel's complete disregard of the Court's discovery orders. Moreover, the awarding of those expenses will effectuate the purpose of Rule 37(b) of the Federal Rules of Civil Procedure. See National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 642-43 (1975); Addington v. Mid-American Lines, 77 F.R.D. 750 (E.D. Mo. 1978); Advisory Committee's Notes, 48 F.R.D. 487, 539-40 (1970); Wright & Miller, Federal Practice Procedure: Civil § 2288 at 787-89 (1970); 4A Moore's Federal Practice, ¶ 37.02 [10-11] at 37-49 (1975).

Respectfully submitted,

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