

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :
 :
 Plaintiff, :
 :
 v. : Civil Action Nos. 78-322/420
 : (Consolidated)
 WILLIAM H. WEBSTER, ET AL., :
 FEDERAL BUREAU OF INVESTIGATION, :
 ET AL., :
 Defendants :

PLAINTIFF'S OPPOSITION TO DEFENDANTS'
MOTION TO AMEND JUDGMENT

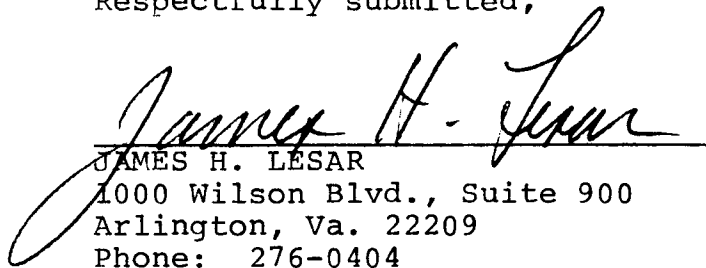
Defendants have moved to amend the judgment previously entered by this Court. Insofar as defendants seek to amend the judgment to reflect an award of attorney's fees and costs against plaintiff's counsel, plaintiff opposes the motion.

Although Rule 37(b)(2) provides that an assessment of attorney fees may be made against the party who fails to obey a discovery order "or the attorney advising him or both," such fees "if awarded against counsel must be in relation to some abuse of the discovery rules." Moore's Federal Practice, citing Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980).

This Court made no such finding with respect to plaintiff's counsel. Plaintiff's counsel did not advise plaintiff not to obey this Court's discovery orders. Thus, there is no basis for making the factual finding which must be made in order to assess attorney's fees and costs against plaintiff's counsel.

The attorney's fees assessed against plaintiff's counsel relate only to the costs incurred by defendants' in moving to dismiss this case. Plaintiff's counsel did advise him that he had good grounds for opposing the motion to dismiss. When plaintiff filed his opposition, he set forth those grounds and cited supporting authority. The advice given by plaintiff's counsel regarding the motion to dismiss was entirely proper and was made in good faith. Thus, there is no factual basis for awarding costs against him in connection with the motion to dismiss. Therefore, defendants' motion to amend the judgment should be denied insofar as it seeks to assess attorney's fees personally against plaintiff's counsel.

Respectfully submitted,

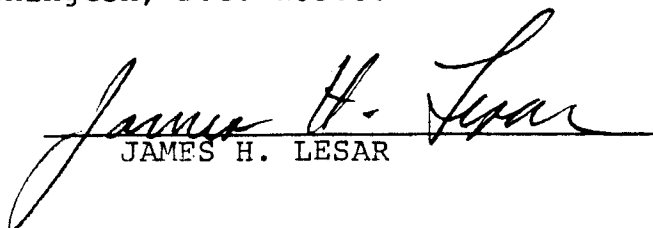


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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of February, 1984, mailed a copy of Plaintiff's Opposition to Defendants' Motion to Amend Judgment to Mr. Henry LaHaie, Civil Division, Room 3338, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

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O R D E R

Upon consideration of defendants' motion to amend judgment, plaintiff's opposition thereto, and the entire record herein, it is by this Court this ____ day of _____, 1984, hereby

ORDERED, that defendants' motion to amend judgment is DENIED.

UNITED STATES DISTRICT JUDGE