

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

WILLIAM H. WEBSTER, ET AL.,  
FEDERAL BUREAU OF INVESTIGATION,  
ET AL.,

Defendants

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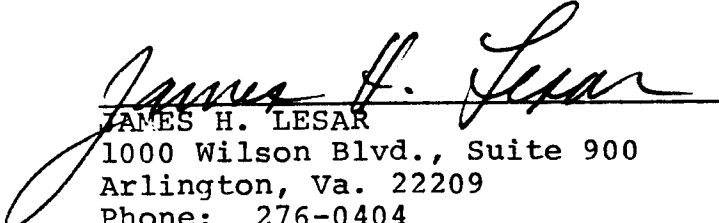
Civil Action Nos. 78-322/420  
(Consolidated)

PLAINTIFF'S MOTION TO VACATE, OR, IN THE  
ALTERNATIVE, TO ALTER THE "AMENDED JUDG-  
MENT FILED ON JANUARY 31, 1984

Comes now the plaintiff, Mr. Harold Weisberg, and moves this Court, pursuant to Rules 6(e), 59(e) and 60(b) of the Federal Rules of Civil Procedure, to vacate its "Amended Judgment" filed on January 31, 1984, or, in the alternative, to alter or amend said "Amended Judgment."

A Memorandum of Points and Authorities and proposed alternative orders are submitted herewith.

Respectfully submitted,

  
JAMES H. LESAR  
1000 Wilson Blvd., Suite 900  
Arlington, Va. 22209  
Phone: 276-0404

Attorney for Plaintiff

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	:	

MEMORANDUM OF POINTS AND AUTHORITIES

On January 20, 1984, counsel for defendants mailed plaintiff's counsel a copy of Defendant's Motion to Amend Judgment. On January 30, 1984, this Court signed an Amended Judgment which, inter alia, renders plaintiff's counsel personally liable for a judgment in the amount of \$1,053.55 plus interest from the date of judgment at the rate of 10.1% compounded daily.

This Court mistakenly acted upon defendant's motion to amend before plaintiff's time to oppose it had run. Federal Rule of Civil Procedure 6(e) clearly provides that an extra three days is added on to the time for responding to motions whenever service of the motion is made by mail. Under the rules, plaintiff has until February 2, 1984 to respond to defendants' motion. Plaintiff had intended to file an opposition to defendants' motion by this date, and is in fact filing it concurrently herewith. Accordingly, this Court should vacate its Amended Judgment because it was precipitously entered without affording plaintiff the opportunity to be heard

in opposition to defendants' motion.

Alternatively, if the Amended Judgment is not vacated, it should be amended to delete that portion which renders plaintiff's attorney personally liable for the \$1053.55 in attorney's fees and costs assessed in connection with defendants' motion to dismiss. Although Rule 37(b)(2) provides that an assessment of attorney fees may be made against counsel for the party unjustifiably opposing discovery, as well as against the party himself, 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 has made no such finding with respect to plaintiff's counsel. Indeed, in assessing attorney's fees and costs against Weisberg in connection with defendants' motion to compel discovery, this Court did not hold plaintiff's counsel liable. Not only has this Court failed to make the finding required to support such an assessment, there is simply no basis for such a finding. Plaintiff's counsel did not in fact advise plaintiff to flatly resist all discovery on the search issue. This decision was dictated by plaintiff himself.

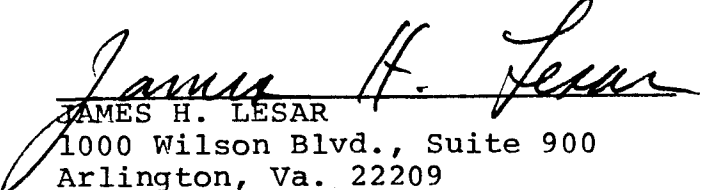
Additionally, it should be pointed out that the attorney's fees assessed against plaintiff's counsel relate only to the costs incurred by defendants' in moving to dismiss this case. Plaintiff's counsel did advise plaintiff that he had good grounds for opposing the motion to dismiss; the opposition which plaintiff filed set forth those grounds and cited supporting authority. The advice given by plaintiff's counsel was entirely properly and made in good faith. Thus, there is no factual basis for awarding costs against him in connection with the motion to dismiss. Accordingly, if the Amended Judgment is not vacated, that part of it which holds plaintiff's counsel liable for defendants' costs should be stricken.

Finally, plaintiff notes that shortly before defendants moved to amend the judgment, defendants' counsel phoned plaintiff's counsel to reject a proposal to settle this case made by plaintiff. During this conversation defendants' counsel stated that defendants' would not be able to attach Weisberg's property during the appeal of this case because he lives outside the District of Columbia; therefore they would move to amend the judgment so they could attach plaintiff's counsel's property.

It is apparent that defendants do not want a resolution of the issues on the merits by the Court of Appeals and have sought to have the judgment amended so they can squeeze plaintiff's attorney and thereby force a settlement on their terms. Such tactics are particularly reprehensible where important issues regarding public access to government information are at stake, and

where, as here, counsel represents a client unable to pay him for his services. They threaten the right of any requester to have his access to public information vindicated through recourse to the courts, including review by the Court of Appeals. This Court should not sanction such tactics by allowing its award of fees against plaintiff's counsel to stand.

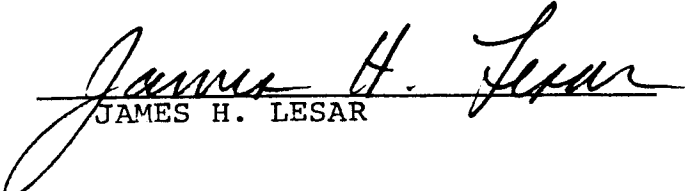
Respectfully submitted,

  
JAMES H. LESAR  
1000 Wilson Blvd., Suite 900  
Arlington, Va. 22209  
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of February, 1984, mailed a copy of the foregoing Plaintiff's Motion to Vacate, Or, in the Alternative, To Alter the Amended Judgment Filed on January 31, 1984 to Mr. Henry LaHaie, Civil Division, Room 3338, U.S. Department of Justice, Washington, D.C. 20530.

  
JAMES H. LESAR

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	:	

O R D E R

Upon consideration of plaintiff's motion to vacate or to alter or amend this Court's Amended Judgment filed in these cases on January 31, 1984, defendants' opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_ day of \_\_\_\_\_, 1984, hereby

ORDERED, that said Amended Judgment be, and hereby is, VACATED.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action Nos. 78-322/420
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ET AL.,	:	
	:	
Defendants	:	

O R D E R

Upon consideration of plaintiff's motion to vacate or to alter or amend this Court's Amended Judgment filed in these cases on January 31, 1984, defendants' opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1984,

ORDERED, that said Amended Judgment be, and hereby is altered and amended by deleting the words "and his attorney, James H. Lesar," from the second paragraph of said Amended Judgment.

\_\_\_\_\_  
JAMES H. LESAR