

Dec 28/84



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION TO VACATE OR, IN THE ALTERNATIVE,  
TO ALTER THE AMENDED JUDGMENT ENTERED ON JANUARY 31, 1984

Defendants argue that plaintiff's counsel is now attempting to litigate for the third time the issue of whether expenses should be assessed against him. Accordingly, they state that "[r]ather than burdening the record with a repetition of the arguments supporting their position that assessment of expenses against plaintiff's counsel was warranted, the defendants instead respectfully refer the Court to those arguments." Defendants' Opposition to Plaintiff's Motion to Vacate, Etc., at 1-2." Defendants' Opposition to Plaintiff's Motion to Vacate, Etc. at 1-2. (Footnote omitted)

The papers to which the Court is referred for these arguments contained no factual basis or legal argument for assessing expenses against plaintiff's attorney. Nor did plaintiff's opposing papers, cited at footnote 1 of Defendants' Opposition to Plaintiff's Motion to Vacate, Etc., address the argument which was not made.

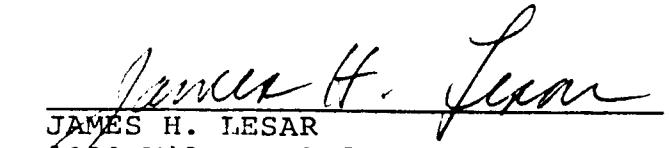
Rule 37(b) provides for assessment of expenses against an attorney when the attorney advises his client not to obey the court's discovery order. Because plaintiff's counsel did not advise plaintiff not to comply with this Court's discovery orders, but in fact made a trip to Frederick, Maryland to try and persuade him to modify his position, the necessary predicate for an assessment of expenses against plaintiff's counsel is lacking. Defendants' have failed to cite any conduct by plaintiff's counsel which would warrant an assessment of expenses against him. This Court was correct in omitting any award of expenses against plaintiff's counsel when it rendered its judgment on January 10, 1984. The inclusion of such an award in the Amended Judgment rendered on January 30, 1984, was in error and should be corrected.

Lastly, note is taken of defense counsel's denial that he stated that defendants "would move to amend the judgment so they could attach plaintiff's counsel's property." The admissions which follow the denial make the denial at best a matter of pure semantics. During his phone conversation with plaintiff's counsel, defense counsel asserted that because Weisberg lives in Maryland defendants would not be able to execute on a judgment against him while the case was on appeal, but this would not apply to his attorney. The message and the threat were clear. In fact, plaintiff's counsel was told that if the Court amended the judgment to include an assessment against him, he would be given five days to pay up,

then defendants would execute on the judgment against him.

Plaintiff disagrees with the Amended Judgment and the Court's order of December 21, 1983, and he fully intends to litigate their validity on appeal. However, even if defendants back off their threat to execute on the judgment against plaintiff's counsel, the fact remains that there is still no basis for an award of expenses against plaintiff's counsel and thus the portion of the Amended Judgment which so provides should deleted.

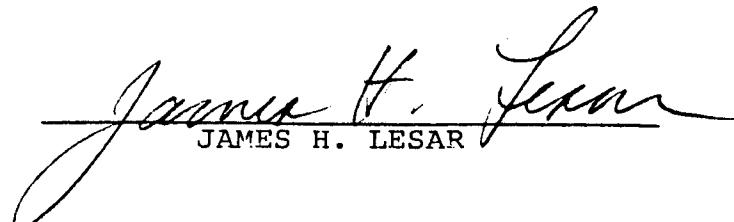
Respectfully submitted,

  
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 21st day of February, 1984, mailed a copy of the foregoing Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion to Vacate, Etc. to Mr. Henry LaHaie, Civil Division, Room 3338, U.S. Department of Justice, Washington, D.C. 20530.

  
JAMES H. LESAR

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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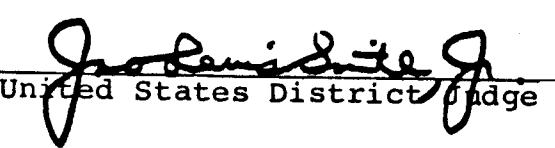
HAROLD WEISBERG, ) CLERK, U.S. DISTRICT COURT  
Plaintiff, ) DISTRICT OF COLUMBIA  
v. ) Civil Action Nos. 78-322  
FEDERAL BUREAU OF ) and 78-420 (Consolidated)  
INVESTIGATION, et al., )  
Defendants. )

O R D E R

Upon consideration of plaintiff's motion to vacate or, in the alternative, to alter the amended judgment entered on January 31, 1984, plaintiff's motion to stay enforcement of the judgment, defendants' opposition, and the entire record, it is by the Court this 14<sup>th</sup> day of February 1984

ORDERED that plaintiff's motion to stay enforcement of the judgment is denied. It is further

ORDERED that plaintiff's motion to vacate or alter the amended judgment is denied.

  
United States District Judge