IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA BUTLER	:	**CIVIL ACTION**
	:	
v.	:	
	:	
BENEFICIAL MANAGEMENT CORP.	:	**NO. 99-3320**

M E M O R A N D U M

WALDMAN, J. **September 26, 2000**

Plaintiff asserted claims in this action of race and sex discrimination and retaliation under Title VII and age discrimination under the ADEA, as well as parallel claims under the Pennsylvania Human Relations Act. She has alleged that she was denied promotion and terminated as a trainee by defendant for purported "performance problems" because of her race, gender and age and in retaliation for a complaint of discrimination to a district manager.

The court entered a scheduling order on February 4, 2000, directing that discovery be completed by July 26, 2000 and that the case be ready for trial on September 4, 2000. Presently before the court is defendants' Motion to Dismiss as a sanction for plaintiff's failure to engage in discovery and to allow the case to proceed as scheduled. Defendant's averments regarding plaintiff's recalcitrance are uncontroverted.

Plaintiff has failed to provide any of the required self-executing disclosures. Defendant served plaintiff with interrogatories and a request for production of documents on

March 27, 2000. Defendant notified plaintiff by letter of May 8, 2000 that her discovery responses were overdue and voluntarily extended the deadline to respond to May 19, 2000. Plaintiff has never responded to the discovery requests in any way and has never requested an extension of time. Plaintiff did not respond to a notice of deposition and defendant has been unable in any event effectively to proceed with a deposition in the absence of any written and documentary discovery.

Defendant filed a motion to compel discovery on June 8, 2000. Plaintiff did not respond to that motion. By order of July 6, 2000, the court granted the motion and ordered plaintiff to respond to defendant's outstanding discovery requests by July 17, 2000. Plaintiff never complied with that order and never provided any justification for her failure to do so.

Plaintiff has failed timely or otherwise to file any of the pretrial submissions as required by the court's order of February 4, 2000, and has never provided any justification for such failure. Plaintiff has filed no response to the instant motion to dismiss.

A court may dismiss an action as a sanction against a party who fails to obey an order to provide discovery. See Fed. R. Civ. P. 37(b)(2)(C). A court may dismiss an action as a sanction against a party who fails to comply with the Federal Rules of Civil Procedure, including discovery rules, or any order

of the court. See Fed. R. Civ. P. 41(b). A court also has the inherent power to dismiss a case that cannot be disposed of expeditiously because of the willful inaction or dilatoriousness of a party. See Chambers v. NASCO, Inc., 501 U.S. 32, 34 (1991); Link v. Wabash R.R. Co., 370 U.S. 626, 630-32 (1962). See also Hewlett v. Davis, 844 F.2d 109, 114 (3d Cir. 1988).

In assessing a motion to dismiss as a sanction, a court generally considers the so-called Poulis factors. See Harris v. Philadelphia, 47 F.3d 1311, 1330 n.18 (3d Cir. 1995); Anchorage Assoc. v. V.I. Bd. of Tax Review, 922 F.2d 168, 177 (3d Cir. 1990); Hicks v. Feeney, 850 F.2d 152, 156 (3d Cir. 1988); Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1987).[1] Not all of the Poulis factors need be satisfied to warrant such a sanction. See Hicks, 850 F.2d at 156.

As plaintiff is proceeding pro se, she must bear sole responsibility for the failure to provide discovery and to comply with the court's orders of February 4, 2000 and July 6, 2000. Defendant has attempted to litigate this action diligently.

The inability during the allotted discovery period to obtain even basic information from a plaintiff regarding her

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[1] These factors include the extent of each party's responsibility for the failure properly to litigate; prejudice to the adverse party; any history of dilatoriness by the recalcitrant party; the willfulness of the offending conduct; the adequacy of any other sanctions; and, the merit of the underlying claims.

claim is clearly prejudicial to the defendant in its attempt to defend against and obtain a prompt resolution of a lawsuit. See Adams v. Trustees, N.J. Brewery Trust Fund, 29 F.3d 863, 874 (3d Cir. 1994) (prejudice encompasses deprivation of information from non-cooperation with discovery as well as the need to expend resources to compel discovery).

Plaintiff has persisted in failing to provide self-executing disclosures, to respond to defendant's discovery requests and to comply with court orders. In the absence of any satisfactory explanation, plaintiff's persistent failure to honor her discovery obligations and the court's orders must be viewed as "a willful effort to evade and frustrate discovery." Morton v. Harris, 628 F.2d 438, 440 (5th Cir. 1980) (Rule 37(b)(2)(C) dismissal warranted for continuing failure to comply with court ordered discovery), cert. denied, 450 U.S. 1044 (1981). See also Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991) (Rule 41(b) dismissal warranted where plaintiff fails to engage in discovery); McDonald v. Head Criminal Court Supervisor Officer, 850 F.2d 121, 124 (2d Cir. 1988) (Rule 37(b)(2)(C) dismissal warranted for failure to comply with court discovery order); Williams v. Kane, 107 F.R.D. 632, 634 (E.D.N.Y. 1985) (plaintiff's claim he was beaten without cause by officers dismissed pursuant to Rules 38(b)(2)(C) & 41(b) for failure to provide court ordered discovery); Booker v. Anderson, 83 F.R.D. 284, 289 (N.D. Miss. 1979). A pro se plaintiff is not excused

from compliance with the federal rules and court orders. See Morton, 628 F.2d at 440.[2]

A monetary sanction should be commensurate with and likely to deter the type of violation at issue. See National Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976). Plaintiff does not appear to be a person of substantial means. An award of costs to defendant or any meaningful monetary sanction, even one relatively modest to an individual of means, would likely rival dismissal in palatability. To preclude plaintiff from introducing evidence related to unanswered discovery requests and from calling witnesses or presenting evidence never identified as required by the court's scheduling order would be tantamount to a dismissal.

The meritoriousness of a claim must be determined from the face of the pleadings. See C.T. Bedwell Sons v. International Fidelity Ins. Co., 843 F.2d 683, 696 (3d Cir. 1988); Poulis, 747 F.2d at 870. This factor is thus of limited practical utility in assessing dismissal under Rule 37 or 41. If a claim as alleged lacks merit, it would generally be subject to dismissal under Rule 12(b)(6) without the need to weigh other factors. Plaintiff has pled facially cognizable claims. Nevertheless, it is difficult conscientiously to characterize a

[2]It may be noted that plaintiff's complaint is perfectly typed, substantively cogent and cites correctly provisions of law regarding jurisdiction and venue.

claim as meritorious when the claimant refuses to subject it to scrutiny through the normal discovery process.

Plaintiff has been completely recalcitrant. Her violation of the federal rules and court orders is flagrant. It has resulted in delay and diversion of resources without any justification. Plaintiff invoked the judicial process and then effectively thwarted discovery and failed even to file her own pretrial submissions, making impossible the proper and efficient litigation of this action. Defendant is clearly prejudiced substantially by having to defend without the benefit of discovery as well as exhibits, witness lists, a specification of damages and pretrial memoranda required by the scheduling order.

To simply again direct plaintiff to honor her obligations under the federal rules and extant court orders would encourage rather than deter dilatoriness and recalcitrance. The discovery deadline has passed. The date for pretrial submissions has passed. The trial date has passed. Plaintiff has never sought an extension or offered any justification for her offending conduct. She has not even responded to the motion to dismiss for failure properly to litigate her claims and to comply with prior court orders.

The balance of Poulis factors weighs significantly in favor of dismissal. Defendant's motion will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this day of September, 2000, upon consideration of defendant's Motion to Dismiss (Doc. #7) and in the absence of any response by plaintiff thereto, consistent with the accompanying memorandum and with Fed. R. Civ. P. 37(b)(2)(C) & 41(b), **IT IS HEREBY ORDERED** that defendant's Motion is **GRANTED** and accordingly the above action is **DISMISSED**.

BY THE COURT:

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JAY C. WALDMAN, J.