

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

HAMAD SHAMMOUH, et al. : CIVIL ACTION
 :
 v. :
 :
 MICHAEL KARP, et al. : NO. 96-4706

MEMORANDUM ORDER

Presently before the court are plaintiffs' Motions for Sanctions and to Compel Responses to Plaintiffs' Interrogatories and Requests for Production Ordered by the Court on December 12, 1996 and August 22, 1997.

Discovery in this housing discrimination case has been as contentious as any ever witnessed by the court. The parties' consistent inability to resolve even routine discovery issues without judicial intervention, as evidenced by twenty-one prior court orders, has resulted in a significant unnecessary diversion of court time. An unfortunate emergency judge who had a holiday weekend interrupted when counsel could not conduct a simple deposition without various disputes characterized the problems they presented as the "pettiest" of their kind he has seen. The parties' submissions to the court routinely contain charges of unethical behavior by opposing counsel. The parties have routinely asked the court to impose sanctions on each other in

response to the endless array of alleged discovery abuses. The present motion appears to reflect the parties' favored course of conduct.

Plaintiffs now ask the court to revisit discovery matters which have been the subject of prior rulings. According to plaintiffs, "[d]efendants have violated each and every order the court has issued in this case." They charge that defendants have refused to produce required information and have provided copies of documents with relevant information missing or obliterated.

Plaintiffs charge that defendants have refused to produce court ordered information concerning defendants' employees, applicants for defendants' rental properties, current residents at defendants' properties and prior testimony given by defendants and their agents. Plaintiffs claim that defendants' answers to interrogatories have been unresponsive or incomplete, that they unilaterally limit the scope of plaintiffs' inquiries and that they have produced documents with information missing or inexplicably redacted.

Defendants state that the current motion alerted them to a limited number of discovery defects and that they have now been cured. These matters include seven unanswered interrogatories and production of an over-edited notebook. Defendants insist that these were inadvertent mistakes and they

have otherwise fully complied with all court orders.¹ Defendants accuse plaintiffs of "blatant lies and gross misrepresentations" in their characterization of the discovery produced by defendants. Defendants contend with some force that their responses to 587 interrogatories and 77 document requests and production of more than 26,000 files does not evince recalcitrance in the conduct of discovery. On the other hand, a party may not excuse the withholding of a pearl of information by disclosing several bushel baskets full of other information.²

Accusations that a party has intentionally withheld information or altered documents subject to court ordered

¹Defendants acknowledge that they require some additional time to locate and produce any pertinent complaints in current tenant files.

²Plaintiffs' charge regarding redaction is not without some circumstantial evidence. On August 22, 1997 the court ordered defendants to produce a notebook kept by Mary Ross at Summit Gardens containing rental information, with the right to redact any information personal to Ms. Ross and irrelevant to this case upon defendants' representation that they would describe to plaintiffs any redacted information. In September 1997 defendants produced eight pages of the notebook, seven photocopies and one original. On the original plaintiffs found correction fluid through which they could read telephone numbers of tenants which the court had ordered defendants to produce. These were also obscured on the other seven pages. It also appears that defendants failed to describe the redactions to plaintiffs. The court will accept defendants' representation that the incorrect redactions resulted from a misunderstanding and that they have now produced copies of all eight pages without redactions. The court is less likely to accept such an assurance should there be a recurrence of this kind of problem.

discovery, if true, would warrant the imposition of substantial sanctions. See, e.g., Corrigan v. Methodist Hosp., 159 F.R.D. 463, 466 (E.D. Pa. 1994); Martin v. Brown, 151 F.R.D. 580, 594 (W.D. Pa. 1993); Marshall v. F.W. Woolworth, Inc., 122 F.R.D. 117, 119 (D.P.R. 1988).

Defendants vehemently maintain that they have produced or are currently producing all discoverable information in their possession and are not defaulting on their discovery obligations.³

The court will not order the production of information which it has already ordered the parties to produce. The court will not order defendants to produce information their lawyer expressly represents has been or imminently will be turned over. The court, however, will not further tolerate the extraordinary inability of the parties responsibly to conclude discovery without inordinate petty disputes and vituperation. The time has come to bring this action to a close.

Until now the court has engaged in forbearance with regard to sanctions. Compensatory sanctions under Rule 37 or 28

³Parties, of course, have a continuing obligation to supplement discovery responses if and when responsive information becomes available. Defendants are mistaken if they believe that information must only be turned over pursuant to court orders. For example, if the "lease transmittal sheets" or current tenant files contain information which is the subject of a proper discovery request and which were not otherwise produced, such documents must be turned over.

U.S.C. § 1927 would have been fairly pointless in this case as the parties or their lawyers would largely be exchanging checks.

Of course, the court can sanction an offending party or lawyer under Rule 37 with a fine payable to the court. See, e.g., Massachusetts School of Law at Andover, Inc. v. American Bar Association, 914 F. Supp. 1172, 1179 (E.D. Pa. 1996); Jaen v. Coca-Cola Co., 157 F.R.D. 146, 149 (D.P.R. 1994). A court also has inherent power to impose appropriate monetary or alternative sanctions where necessary to deter or punish egregious conduct of a party or lawyer. Chambers v NASCO, 501 U.S. 32, 49 (1991). The court has refrained from doing so in the vain hope that its admonitions to counsel would suffice.

The court will extend the discovery deadline a final time to December 26, 1997. During this extended period, the parties will examine carefully all discovery responses produced in this case and will supplement any that may be necessary strictly to conform with their obligations and the orders of the court. During this period the parties will complete any and all outstanding discovery. The court will not grant another extension. The court will not entertain further discovery motions.

If at the close of this period any party avers that all discovery has not then been provided or any court order not fully complied with, the court will conduct a hearing at which counsel

and others with pertinent knowledge will be questioned under oath. The court will make any necessary credibility determinations. If the court concludes that a party or an attorney has willfully failed fully to comply with the Federal Rules of Civil Procedure or a court order or has made an unfounded assertion of a privilege in response to a discovery request, significant sanctions will be imposed on each offending individual or entity. The parties are hereby put on notice that such sanctions may include dismissal of this action or entry of judgment by default pursuant to Rule 37(b)(2)(C).

ACCORDINGLY, this day of November, 1997, upon consideration of plaintiffs' Motions for Sanctions and to Compel Responses to Plaintiffs' Interrogatories and Requests for Production (Doc. #101) and defendants' response thereto, **IT IS HEREBY ORDERED** that said Motions are **DENIED**; and, **IT IS FURTHER ORDERED** that the discovery deadline is extended to December 26, 1997 to provide the parties with a final opportunity responsibly to complete any remaining discovery; to supplement discovery responses as may be appropriate and to comply with the discovery orders of the court, after which a hearing will be held to determine the responsibility of each party and lawyer for any failure to complete such discovery or comply with such requirements by that date and to impose sanctions.

BY THE COURT:

JAY C. WALDMAN, J.