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

ROBERT CREELY	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	NO. 04-CV-0679
	:	
GENESIS HEALTH VENTURES, INC., ET AL.	:	

MEMORANDUM & ORDER

SURRICK, J. **January 10, 2005**

Presently before the Court is Plaintiff Robert Creely's Motion To Determine The Sufficiency Of Objections To Request For Admissions And For Fees (Doc. No. 9) and Defendant Genesis Health Ventures, Inc.'s Response. (Doc. No. 13.) For the following reasons, Plaintiff's Motion will be granted.

I. FACTS

The instant case is a race discrimination lawsuit that was filed on February 17, 2004. Plaintiff alleges that he worked for various nursing homes owned and operated by Defendant from 1997 until 2003. (Doc. No. 1 at 3.) Plaintiff alleges that on or around May, 2003, he applied for rehire by Defendant. (*Id*.) Plaintiff alleges that Marvin Kirkland, Director of Nursing, interviewed him and told him that he was listed as "do not hire" on Defendant's database. (*Id*.) Plaintiff contacted Defendant's corporate headquarters. (*Id*. at 4.) Defendant explained that it does not maintain such a list. (*Id*.) Plaintiff asserts that Kirkland, who is African-American, told him he was on a "do not hire" list because Plaintiff is Caucasian. (*Id*. at 5.) He initiated the instant action for racial discrimination under 42 U.S.C. § 1981. (*Id*. at 1.)

Plaintiff files the instant Motion to compel Defendant to respond to his First Request for Admissions. (Doc. No. 9 at 5.)

II. LEGAL STANDARD

"It is well-established that the scope and conduct of discovery are within the sound discretion of the trial court." *Gaul v. Zep Mfg. Co.*, Civ. A. No. 03-2439, 2004 U.S. Dist. LEXIS 1990, at *2-3 (E.D. Pa. Feb. 5, 2004) (quoting *Marroquin-Manriquez v. INS*, 699 F.2d 129, 134 (3d Cir. 1983)). Pursuant to Federal Rule of Civil Procedure 26(b)(1), a party may seek discovery of "any matter, not privileged, which is relevant to the subject matter in the pending action." Fed. R. Civ. P. 26(b)(1). "The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*

Rule 37 "authorizes a party who has received evasive or incomplete answers to discovery authorized by . . . Rule 26(a) to bring a motion to compel disclosure of the materials sought." *Northern v. City of Philadelphia*, Civ. A. No. 98-6517, 2000 U.S. Dist. LEXIS 4278, at *3 (E.D. Pa. Apr. 4, 2000). Once a party opposes a discovery request, the party seeking the discovery must demonstrate the relevancy of the information sought. *Id.* at *5. "When this showing of relevance is made, the burden then shifts back to the party opposing discovery to show why the discovery should not be permitted." *Id.* A party's statement "that the discovery sought is overly broad, burdensome, oppressive, vague or irrelevant is 'not adequate to voice a successful objection.'" *Id.* (quoting *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982)). Further, "[i]t is well recognized that the federal rules allow broad and liberal discovery," *Pacitti v. Macy's*, 193 F.3d 766, 777 (3d Cir. 1999), and that relevancy is broadly construed. *See*

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978) ("The court should and ordinarily does interpret 'relevant' very broadly to mean matters that are relevant to anything that is or may become an issue in the litigation.").

Federal Rule of Civil Procedure 36 governs requests for admissions. Rule 36(a) states that "[a] party may serve upon any other party a written request for admission, for purpose of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request." Fed. R. Civ. P. 36(a). Where objections to the request for admission are filed, the court shall order that an answer be served unless the court determines that the objection is justified. *Id*.

III. DISCUSSION

On September 23, 2004, Plaintiff served Defendant with his First Requests for Admissions. (Doc. No. 9 at 4.) On October 22, Defendant answered Plaintiff's First Request for Admissions, but failed to respond to the Requests that Defendant deemed "duplicative and unreasonably cumulative" or not relevant. (Doc. No. 13 at 2.) On October 29, Plaintiff's counsel contacted Defendant's counsel. (*Id*.) A contentious telephone call ensued. (*Id*.) As a result of the telephone call, Defense counsel withdrew its objections to seven requested admissions. (*Id*.) Now, Plaintiff seeks to compel Defendant to answer the remaining Requests. Plaintiff also seeks reasonable attorneys' fees incurred in filing the instant Motion. (Doc. No. 9 at 5.)

A. First Group of Requests

Plaintiff's first group of Requests concerns the number of employees from 1998 until 2002 employed by Defendant. Defendant claims that these requests are "duplicative,

unreasonably cumulative . . . burdensome and oppressive" (Doc. No. 13 at 6) and not "reasonably calculated to lead to the discovery of admissible evidence." (Doc. No. 9 Ex. B) Plaintiff explains that he sought these admissions because "[f]ederal EEOC guidelines require employers to maintain records when discrimination claims are filed." (Doc. No. 9 at 7.) Plaintiff notes that he worked for Defendant's institutions for approximately five years and would like to establish that the guidelines apply to each year Plaintiff worked for Defendant. (*Id*.)

Rule 36(a) is "'a procedure for obtaining admissions for the record of facts already known' by the seeker." *Ghazerian v. United States*, Civ. A. No. 89-900, 1991 WL 30746, at *1 (E.D. Pa. Mar. 5, 1991) (quoting 8 Charles A. Wright & Arthur Miller, Federal Practice & Procedure § 2253 (1970)). The court in *Ghazerian* explained that Rule 36(a) assists in limiting issues for a trial, rather than providing new information. *Id.* Moreover, a party's statement "that the discovery sought is overly broad, burdensome, oppressive, vague or irrelevant is 'not adequate to voice a successful objection.'" *Id.* (quoting *Josephs*, 677 F.2d at 992.) It is entirely reasonable and relevant for Plaintiff to establish Federal EEOC guidelines applied to him while he was employed by Defendant. Accordingly, we direct Defendant to provide answers to Plaintiff on this issue.

B. Second Group of Requests

Plaintiff's second group of Requests regards the issue of Crestview's relationship to Defendant Genesis Health Ventures, Inc. from 1998 until 2003. Defendant claims that this issue is irrelevant to Plaintiff's claim. (Doc. No. 13 at 7.) Plaintiff explains that these Requests are relevant because Defendant "denies that Crestview has defended against the instant lawsuit because it is not the defendant in the instant lawsuit." (Doc. No. 9 Ex. B, Question 33.) "[I]t is

well recognized that the federal rules allow broad and liberal discovery," *Pacitti*, 193 F.3d at 777, and relevancy is broadly construed, *Oppenheimer Fund, Inc.*, 437 U.S. at 351. Given the confusion surrounding Defendant's correct name and Defendant's assertion that Genesis Health Ventures, Inc. is the incorrect defendant, we find that Plaintiff's Requests are relevant.

Defendant adds that Plaintiff's counsel is aware of Defendant's corporate structure because Plaintiff in *Waters v. Genesis Health Ventures, Inc.*, Civ. A. No. 03-2909 (E.D. Pa. filed May 2, 2003), also pending before this Court, tried to amend the complaint for this reason.[1] (Doc. No. 13 at 7.) Again, Rule 36(a) is "'a procedure for obtaining admissions for the record of facts already known' by the seeker." *Ghazerian*, 1991 WL 30746, at *1 (quoting 8 Wright & Miller, § 2253). The court in *Ghazerian* explained that Rule 36(a) assists in limiting issues for a trial, rather than providing new information. *Id.* at *2. Accordingly, even if Plaintiff is aware of Crestview's relationship to Genesis Health Ventures, Inc., Plaintiff is complying with the purpose of Requests for Admissions by trying to limit issues for trial. Accordingly, we order Defendant to answer these Requests.

C. Third Group of Requests

The third group of Requests[2] concerns Morton Ginhart, the present Director of Crestview, North, Inc. (Doc. No. 9 at 11.) Plaintiff alleges that Kirkland discriminated against Ginhart, who is Caucasian. (*Id.*) Defendant objected to these Requests based on relevance. (Doc. No. 13 at 8.) Specifically, Defendant argues that these Requests seek information regarding a discrete

[1]The Defendant and Plaintiff in the instant lawsuit and in *Waters* are represented by the same counsel.

[2]These concern Requests for Admissions 68 through 110.

disciplinary issue not involving Plaintiff. (*Id*.) Plaintiff argues that our prior Order in *Waters v. Genesis Health Ventures, Inc*., Civ. A. No. 2909, 2004 WL 870694 (E.D. Pa. Apr. 22, 2004), stated that all adverse employment actions can be used to prove discriminatory intent. (Doc. No. 9 at 11.) While we would not characterize our prior Order with this sweeping description, we do agree with Plaintiff that his Requests concerning Ginhart are relevant. In Plaintiff's Complaint, he alleges that "[d]uring the same time that Marvin Kirkland was lying to prospective Caucasian job applicants, he was also manufacturing false and malicious reprimands and undeserved poor evaluations about and concerning existing Caucasian employees to prompt and/or cause their termination." (Doc. No. 1 ¶ 34.) Accordingly, we cannot agree that Plaintiff's Request is not relevant. It concerns information about Kirkland's allegedly discriminatory treatment of a Caucasian employee.

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Determine the Sufficiency of Defendant's Objections to Plaintiff's Request for Admissions is granted. Plaintiff's request for counsel fees will be denied.

An appropriate Order follows.

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GENESIS HEALTH VENTURES, INC., ET AL.	:	

ORDER

AND NOW, this 10th day of January, 2005, upon consideration of Plaintiff Robert Creely's Motion to Determine the Sufficiency of Defendant's Objections to Plaintiff's Request for Admissions (Doc. No. 9, No. 04-CV-0679) and Defendant Genesis Health Ventures, Inc.'s Response thereto, it is ORDERED that Defendant answer Plaintiff's First Requests for Admissions immediately. Plaintiff's request for counsel fees is denied.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge