

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UMOH J UMOH,

Plaintiff,

VS.

PSI GROUP INC,

Defendant.

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CIVIL ACTION NO. H-09-3132

MEMORANDUM AND ORDER

I.

Before the Court is the defendant, PSI Group, Inc.'s, motion for continuance and request to extend the discovery period or the period for dispositive motions (Inst. #29) and the plaintiff, Umoh J. Umoh's, response and like motion (Inst. # 31). Also pending are the defendant's earlier filed motion for sanctions and for dismissal of the plaintiff's case (Inst. #28) and the plaintiff's response (Inst. # 32). The Court has reviewed the documents on file and determines that the defendant's motion for continuance should be denied; its motion for sanctions should be granted; and, the plaintiff's motion(s) should be denied.

II.

The defendant's motion arises as a result of reported: (a) failures on the part of the plaintiff to comply with discovery requests, (b) refusals to attend noticed depositions and produce requested documents; and (c) abusive conduct by the plaintiff at and during the course of his deposition. The plaintiff's response to the defendant's charges is essentially as follows: (a) the attorneys "were too busy on recording the conversation, rather than discussing on the issues presented; (b) they "refused to talk about the issues," and (c) the plaintiff has acted in

good faith, did not refuse to participate, has no other documents and has complied with the notices of deposition. Therefore, the plaintiff asserts, his case should not be sanctioned.

III.

Federal Rules of Civil Procedure, Rule 37(b)(2)(A)(v) permits the dismissal of an action “in whole or in part” where a deponent fails to obey orders of the court and particularly FRCP 26(f). Rule 26(f) refers to the parties discovery plan and assumes that when the plan is in place the parties will cooperatively proceed, in good faith, to comply with disclosure requirements and, as well, present themselves for discovery in an effort to accomplish the plan without court intervention. *See* Fed. Rules Civ. Proc., Rule 37(a).

IV.

The plaintiff is *pro se* litigant and has resisted discovery thereby requiring Court interventions. The defendant complains that it has been unable to effectively complete the plaintiff’s deposition because the plaintiff refused to answer the questions asked and displayed abusive conduct during his deposition. As examples of the plaintiff’s conduct, the defendant presented deposition excerpts, some of which the Court includes here:

Q. Have you ever had your deposition taken before today?

A. I don't understand your question right now.

Q. In any other lawsuit have you been deposed before?

A. Deposed before?

Q. Yes.

A. I don't understand that question, sir. I don't understand that question.

Q. What do you not understand?

A. This is the time I'm -- the case I'm here is between me and PSI, my former employer. This case is about that the former employer did discriminate me -

- against me on my job because of my race, because of my ethnic ethnicity, and because of national origin, and I have evidence here.

I reported to the -- according to US Federal Law, I reported this to the -- according to the law, to the Ethic Commission at three locations that -- and this, you have a copy of this and it's in court and the name who I filed the report in three different location or more. I have a feeling you have this too and this is what. And I -- the people you defend are aware of it.

So I'm not coming here with new evidence. So I am not going to start something new. I'm the plaintiff who -- I'm filing my grievances from Ethic Commission. You have the paper here. I lined the place. It was on -- let me briefly -- I would like to briefly describe this case.

Plaintiff's Deposition, p. 7:9-25, p. 8:1-13.

...

Q. Mr. Umoh, have you seen the document marked Exhibit No. 1 [the Court's Order to Attend Deposition and Produce Documents] before?

A. I'm not going to answer any of those things because you know you refuse to speak on the issue.

Plaintiff's Deposition, p. 32:4-7, and Exhibit 1.

...

Q. Sir, have you attempted to seek employment since leaving PSI?

A. Yes.

Q. Who did you try and seek employment with?

A. I seek thousands of employee. So -- yeah.

Plaintiff's Deposition, p. 33:5-9.

...

Q. Are you refusing to give me the documents that reflect your efforts to obtain employment?

A. I give you everything pertaining to this -- to this case.

Q. Do you believe that your efforts to obtain employment pertain to this case?

A. I'm not going to talk about that because I already give you everything pertaining to this case.

Q. Is it your testimony under oath that you've given me the documents that reflect your efforts to obtain employment? Is that what you're telling us?

A. I'm not going to answer that.

Plaintiff's Deposition, p. 39:23-25, p. 40:1-5, 14-18.

...

Q. Do I take it from your answer that at some point in the future you will provide those documents?

A. What document?

Q. The hundreds of documents that you say reflect your efforts to obtain employment.

A. Yes.

Q. Okay. Why are you not giving them to us now?

A. Mr. Pryor, I'm here not to talk about -- I'm here. . . .

Plaintiff's Deposition, p. 47:7-16.

...

Q: (By Mr. Pryor) Mr. Umoh, have you seen Exhibit 2 before [the Notice of Deposition]?

A: I'm not talking about it. I'm talking -- I'm asking you a question. You didn't answer my question; I'm not going to answer your question.

Q: Mr. Umoh --

THE WITNESS: I asked you a question.

MR. PRYOR: It's because, sir, I have not been noticed for a deposition. I'm not here to answer questions. This is your opportunity to answer our questions, and I would ask you to do so.

Q: (Mr. Pryor) Can you please identify for me whether or not you have seen Exhibit No. 2 [the notice of deposition]?

A: You do not answer my question. When I am here because when I ask you, you have to answer me. Okay. You can't take advantage of me because I come here by myself. No. ask questions, you refuse to answer. Every question I ask since I came here you don't answer me one.

MR. PRYOR: I understand. I'm not here to be examined by you today, sir. I don't want to go down that road with you. I want you –

Plaintiff's Deposition, pp. 51:17 – 52:15.

V.

After a review of the defendant's motion and the plaintiff's response, the plaintiff's past conduct as well as the hostility displayed during his deposition, the Court is of the opinion that the plaintiff has failed and refused to cooperate in good faith in the discovery process. Perhaps the reason is the plaintiff's lack of understanding concerning the judicial process. However, the plaintiff's lack of understanding does not explain or excuse his disrespectful conduct directed at opposing counsel and the disregard for the Court's previous orders. *See* [Court Instrument Nos. 9, 12, 14, 22, 25, 26 and 27]. These documents reveal the plaintiff's disregard for the discovery process, and when combined with his conduct during his deposition leads the Court to conclude that the plaintiff is a factious man who intentionally engages in controversy without due regard for the rules of discovery.

The plaintiff has been previously warned and yet his disrespectful conduct persists leading the Court to conclude that dismissal is the appropriate sanction and that a lesser sanction

would not deter the plaintiff's conduct. *See Coane v. Ferrara Pan Candy Co.*, 898 F.2d 1030, 1032 (5th Cir. 1990).

It is therefore ORDERED that the plaintiff's case is Dismissed with prejudice.

SIGNED at Houston, Texas this 15th day of September, 2010.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge