

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 02-22913-CIV-Graham/Garber

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

CEDARS HEALTHCARE GROUP, LTD.  
d/b/a COLUMBIA CEDARS MEDICAL  
CENTER,

Defendant.

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2003 DEC -5 PM 4:28  
D.C.  
CLERK OF COURT  
S.D. OF FLA - MIA

**ORDER**

THIS CAUSE is before the Court on the defendant's Motion for Sanctions filed on October 1<sup>st</sup>, 2003, and plaintiff's response thereto. A hearing was held on said motion on October 30<sup>th</sup>, 2003.

The Motion for Sanctions recites a number of failures by the defendant to provide discovery to plaintiff as required by all applicable rules of court. For example, plaintiff withheld furnishing the names of 12 physicians that treated Heather Rockcastle or physicians that assisted her in her various claims for disability benefits. In its first set of interrogatories the defendant sought the identity of any person "whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings." This interrogatory was propounded in January of 2003. In response thereto plaintiff listed 14 persons, none of whom were Ms. Rockcastle's physicians.

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Subsequently, and on or about March 22, 2003, the defendant submitted a second set of interrogatories, seeking to obtain the names of all of the physicians and health care providers that Ms. Rockcastle consulted with regarding her claimed disabilities and to also identify all health care professionals who provided service, care, or treatment to her subsequent to January 1, 1996.

Subsequent discovery received by the defendant revealed that the responses to interrogatories were totally inadequate. Upon defendant's receipt of Rockcastle's Social Security Administration file did the defendant become aware of the names of the physicians in question. Such information was received on September 20, 2003, two days prior to the then set date for discovery cut-off.

Throughout these proceedings delay has been the practice of the plaintiff in complying with its discovery obligations. A further example of such delay relates to the production of Rockcastle's social security file, which had been requested in July of 2003. On September 20<sup>th</sup>, 2003 the plaintiff furnished defendant with a copy of the social security file which contained numerous documents that were not produced earlier as sought in discovery. At her earlier deposition Rockcastle had testified that she did not recall filling out any forms, forms which were contained in the late-produced social security file.

It is also apparent to this Court that the plaintiff had failed to disclose the names of those physicians who were aware of Rockcastle's claims when they were aware of their identities as revealed in the social security file. Such failure to disclose by the EEOC has greatly impaired the defendant's efforts at defending this cause.

By Judge Graham's Order of November 4, 2003, the trial of this cause has now been

continued to March 1, 2004; discovery was extended to December 1, 2003, and motion cut-off date has been extended to December 15, 2003. Defendant, becoming aware of the identity of Rockcastle's physicians on or about September 20, 2003, has had from that date until December 1, 2003 within which to complete discovery.

Plaintiff's conduct, as set forth above, in addition to other dilatory tactics as set forth in defendant's Motion for Sanctions, convinces this Court that the imposition of sanctions is appropriate. Accordingly, and upon due and careful consideration, it is hereby

ORDERED as follows:

1. That defendant's Motion for Sanctions is GRANTED.
2. That the undersigned recommends to the District Judge that the Court, at trial, give an adverse inference instruction to the effect that the jury is free to infer that the 12 physicians identities were not revealed because the plaintiff expected such witnesses to offer testimony adverse to the plaintiff's position in this cause that she was not qualified to perform her job at the defendant Cedars. Such sanction has been considered to be one of the least severe. Immuno Vital, Inc. v. Telemundo Group, Inc., 203 F.R.D. 561, 574 (S.D.Fla. 2001). See Reilly v. Natwest Markets Group, Inc., 181 F.3d. 253, 267 (2d Cir. 1999) wherein the Court gave an adverse inference instruction arising out of the defendant's delay in handing over files.
3. That plaintiff shall pay the reasonable fees and costs incurred by the defendant in bringing this Motion for Sanctions. Defendant's counsel shall submit to the Court and opposing counsel, on or before 15 days from the receipt of this Order, a statement setting for the time expended in the preparation and presentation of argument on this Motion, together

with a statement as to the hourly rate for legal services. It is further

ORDERED that defendant's Motion to Compel regarding Rockcastle's file in her social security claims matter is DENIED AS MOOT, said file having been produced to defendant by Lyle Lieberman, Esquire, her social security counsel.

DONE AND ORDERED in Chambers at Miami, Florida this 5<sup>th</sup> day of December, 2003.



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BARRY L. GARBER  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
U.S. District Judge Graham  
Counsel of record