

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

ORDER

CV 03-4227 (LDW) (WDW)

-against-

BOSTON MARKET CORP.,

Defendants.

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WALL, Magistrate Judge:

Before the court is a letter motion from plaintiff EEOC dated November 22, 2004, to compel defendant to provide initial disclosures pursuant to Fed. R. Civ. P. 26 (a)(1). Defendant opposes the motion in a letter dated November 24, 2004. For the reasons set forth herein, the motion is granted and the costs of the motion are awarded to plaintiff as a Rule 37 sanction.

Rule 26 (a) provides that initial disclosures “must be made at or within 14 days after the Rule 26 (f) conference.” The conference took place on October 20, 2004, and all initial disclosures should have been served by November 3rd. Defendant did not timely serve the disclosures. When no disclosures had been received by November 8th, plaintiff’s counsel wrote to defendant’s counsel, then called. Defendant’s counsel apparently represented that the disclosures would be provided during the week of November 15th. When no response had been received by November 19th, plaintiff’s counsel again wrote to defendant’s counsel, indicating that she would be forced to seek the court’s intervention if the disclosures were not received by noon on November 22nd. The disclosures were not received and this motion followed.

In opposition to the motion, defendant’s counsel states, in a brief, three-paragraph submission, that the initial disclosures were served by hand on November 23, 2004, apparently suggesting that the motion is moot, and requests that the motion be denied. Defendant offers no

reason for failing to timely serve initial disclosures or for failing to follow through with subsequent assurances to provide them.

A party cannot simply ignore discovery demands, fail to respond to the adversary's good faith efforts to obtain the disclosure, wait for the adversary to incur the expense of making a motion to the court, and then expect the court to step in and absolve them. Rule 37(a)(4) provides that "[T]he court shall . . . require the party whose conduct necessitated the motion or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds . . . that the . . . nondisclosure . . . was substantially justified, or that other circumstances make an award of expenses unjust." (emphasis added). Defendant has offered no reason whatsoever for the failure to provide initial disclosures. The court finds that defendant has utterly failed to demonstrate that the nondisclosure was "substantially justified, or that other circumstances make an award of expenses unjust," and, without that showing, Rule 37 requires the imposition of such costs. A party has a right to timely disclosures, and to prompt responses to good faith efforts to resolve discovery disputes. Here, the plaintiff was afforded neither.

Plaintiff shall submit a statement of reasonable expenses, with the requisite support, within 15 days of the date of this order.

Dated: Central Islip, New York
November 30, 2004

SO ORDERED:

s/William D. Wall
WILLIAM D. WALL
United States Magistrate Judge