

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION)
and CONSTANCE AMOS,)
)
Plaintiffs,)
)
v.)
)
AUTOZONE, INC.,)
)
Defendant.)

NO. 00-2923 Ma/An

ORDER DENYING MOTION FOR PROTECTIVE ORDER AND TO QUASH

Before the Court is Defendant's Motion for Protective Order and to Quash Subpoena Duces Tecum filed on December 14, 2004. United States District Judge Samuel H. Mays, Jr. referred this matter to the Magistrate Judge for determination. For the reasons set forth below, the Motion is **DENIED**.

BACKGROUND

On September 30, 2000, Plaintiff Equal Employment Opportunity Commission ("Plaintiff") filed suit against Defendant alleging that Defendant discriminated in hiring and promoting blacks and females in executive and manager positions at its Store Support Center in Memphis, Tennessee. Plaintiff also alleges that Defendant discriminated against hiring females into technical positions and service worker positions at its Store Support Center in Memphis, Tennessee. In October 2004, Plaintiff notified Defendant it intended to take the deposition of Dr. N. Geraldine House, a member of Defendant's Board of Directors, and the parties agreed to take

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Dr. House's deposition on December 14, 2004. Plaintiff issued a notice of deposition for Dr. House on November 2, 2004, requesting she appear at Plaintiff's New York office and produce certain documents at her deposition.

Defendant has requested the Court enter a protective order prohibiting Plaintiff from taking Dr. House's deposition. Defendant states in its Memorandum that Plaintiffs "believe that Dr. House requested during the time frame 2000-2001 to be provided quarterly reports concerning diversity matters at AutoZone." (Mem. in Supp. of Mot. for Protective Order, at 2). Dr. House, however, has remarked that she never requested these reports. As such, Defendant argues that there is no relevant reason for taking Dr. House's deposition. Because Dr. House has a full time position as the President of the Institute for Student Achievement, allowing the deposition of Dr. House would be an imposition on her time and would be unduly expensive to Defendant. Defendant also argues the subpoena duces tecum served on Dr. House is overly broad and unlimited in time; therefore, Defendant asks the Court to quash the subpoena duces tecum.

ANALYSIS

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action." Fed. R. Civ. P. 26(b)(1). Relevancy, for purposes of Fed. R. Civ. P. 26(b)(1), means "appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1); *see also Coleman v. Am. Red Cross*, 23 F.3d 1091, 1097 (6th Cir. 1994). In this Circuit, the scope of discovery is extremely broad

under the Federal Rules of Civil Procedure and “is . . . within the broad discretion of the trial court.” *Lewis v. ACB Business Servs. Inc.*, 135 F.3d 389, 402 (6th Cir. 1998).

The Rules of Civil Procedure provide that “[o]n timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it . . . subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3). A person may be subjected to undue burden if they are required to attend more than one deposition. For example, a party must obtain leave of court to conduct a deposition of a person that has “already been deposed in the case.” Fed. R. Civ. P. 30(a)(2). Because discovery rules should “‘be construed to secure the just, speedy, and inexpensive determination of every action’ . . . judges should not hesitate to exercise appropriate control over the discovery process.” *Herbert v. Lando*, 441 U.S. 153, 177 (1979) (quoting Fed. R. Civ. P. 1). The Court, however, should ensure that the party asking for a protective order can show good cause. *See* Fed. R. Civ. P. 26(c).

In this matter, Defendant has not demonstrated good cause under Fed. R. Civ. P. 26(c) for issuing a protective order or quashing a subpoena. Defendant claims that Plaintiff only wants to depose Dr. House because she may have requested diversity reports, but that may or may not be true. Plaintiff states that diversity reports would only be one area of inquiry for Dr. House, and since Dr. House has been a member of Defendant’s Board of Directors since 1996, she may have information that is relevant or that could lead to the discovery of admissible evidence. The Court is not convinced that Plaintiff desires to depose Dr. House in an effort to annoy, embarrass or oppress her. Moreover, Defendant has not otherwise demonstrated sufficient cause to justify a protective order.

There is also no evidence that deposing Dr. House will be unduly burdensome or that it would result in undue expense to Defendant. Plaintiff has agreed to depose Dr. House in her home state of New York, where she currently resides, and Plaintiff has indicated that Dr. House's deposition should not last more than four hours. Plaintiff's efforts will minimize any inconvenience to Dr. House and minimize any expense to Defendant.

Finally, Plaintiff has agreed in its Response to limit the scope of the deposition to the time period of January 1, 1995 to July 3, 2002 as to Dr. House's knowledge of potentially relevant matters, and to the time period of January 1, 1993 to July 3, 2002 as to the production of any documents in Dr. House's possession relating to hiring and promotions into official manager positions at Defendant's Store Support Center. With these limitations, the Court does not believe that the subpoena is overly broad.

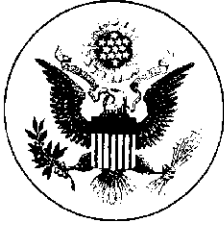
For these reasons, Defendant's Motion is **DENIED**. Pursuant to the Order of Reference, any objections to this Order shall be made in writing within ten days after service of this Order and shall set forth with particularity those portions of the Order objected to and the reasons for those objections.

IT IS SO ORDERED.



S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date: February 15, 2005



Notice of Distribution

This notice confirms a copy of the document docketed as number 221 in case 2:00-CV-02923 was distributed by fax, mail, or direct printing on February 16, 2005 to the parties listed.

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Honorable Samuel Mays
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