

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2001 JUN 15 AM 8:30
WESTERN DISTRICT OF TEXAS
BY ACD
CLERK

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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v.

EP-00-CA-297-DB

WESTLODGE HOSPITALITY, INC.,
d/b/a EL PASO TRAVELODGE-CITY
CENTER, WW LODGING LIMITED,
L.L.C. d/b/a EL PASO
TRAVELODGE-CITY CENTER

ORDER

On this day, the Court considered Plaintiff the Equal Employment Opportunity Commission's "Motion to Compel Defendant WW Lodging Limited, L.L.C. to Respond to Discovery Requests" ("Motion to Compel"), filed in the above-captioned cause on May 21, 2001. Defendant filed a Response on June 7, 2001, and Plaintiff, in turn, filed a Reply on June 13, 2001.

In an Original Complaint filed September 28, 2000, Plaintiff alleges that in October 1998, Defendant discharged Carlos Sanchez ("Sanchez") from his employment as a night auditor at the El Paso Travelodge-City Center on account of a disability – a spinal condition that requires him to use a wheelchair for mobility, in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* Plaintiff alleges that Defendant acted intentionally and with malice and/or reckless disregard to Sanchez's federally protected rights when it terminated Sanchez's employment. Defendant, for its part, denies Plaintiff's allegations

and contends that Sanchez was discharged because he lacked the basic computer skills required for the position of night auditor.

In the instant motion, Plaintiff claims that Defendant has failed to comply with Requests for Production Numbers 2, 6, 9, and 11, as well as Plaintiff's Interrogatories 2, 6, and 8. The Parties have since reached an agreement with regard to all the issues raised by Plaintiff, save two.

The first concerns Request for Production Number 6, in which Plaintiff requested:

Your financial records, including but not limited to the federal income tax returns, along with all schedules, attachments, and/or amendments thereto that you filed with the United States Internal Revenue Service for the calendar or tax years of 1997, 1998, 1999, 2000, and 2001, and all prospectus, profit and loss statements, and/or other financial reports issued by or on your behalf from January 1, 1997 through the present.

In an April 10, 2001, "Objections and Responses to Plaintiff's First Request for Production," Defendant objected to the request on the grounds that it is unreasonably burdensome, that it involves confidential and proprietary information, and that it seeks to discover information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence.

Plaintiff disagrees, arguing that since Plaintiff alleges that Defendant acted with malice or reckless indifference when it terminated Sanchez's employment, information concerning Defendant's net worth is relevant to punitive damages. Thus, in a letter dated May 11, 2001, Plaintiff, agreed to limit its request to documents sufficient to permit Plaintiff to determine Defendant's net worth. Still, by the time Plaintiff filed the instant Motion, no documents were forthcoming.

Defendant argues that Plaintiff's claim of punitive damages is highly speculative and without any support in the documents thus far discovered. Assuming, however, that Plaintiff is entitled to this discovery, Defendant contends that Plaintiff's request requires Defendant to disclose confidential financial information that goes beyond the limited question of net worth. Moreover, Defendant argues, the relevant inquiry in determining punitive damages is as to Defendant's net worth *at the date of trial*, and not Defendant's entire financial history. The Court agrees. While the Court finds that the most recent profit and loss statement is relevant to Plaintiff's damages inquiry, earlier profit and loss statements are not. Hence, the Court is of the opinion that Plaintiff's Motion to Compel as to Request for Production Number 6 should be granted in part and denied in part. Defendant must supply Plaintiff with Defendant's most recent profit and loss statement or any financial statement likely to show Defendant's current net worth. Any other document sought in Plaintiff's Request for Production Number 6 need not be produced.

The second matter remaining before the Court is Plaintiff's Interrogatory Number 6, which requests that Defendant state the number of employees it had on its payroll for calendar years 1997, 1998, 1999, and 2000. In an April 10, 2001, "Objections and Answers to Plaintiff's First Set of Interrogatories," Defendant objected on the ground that the interrogatory is not limited to a time period relevant to the dispute, and therefore, is not likely to lead to the discovery of admissible evidence. Nevertheless, Defendant responded that it had thirty-eight employees in 1999, and thirty-two employees in 2000.

Plaintiff argues that Defendant's response is incomplete because the number of people Defendant employed during the year when the discrimination allegedly occurred, 1998,

and the preceding year controls the amount of compensatory and punitive damages for which Plaintiff may be eligible. As such, on April 20, 2001, Plaintiff sent a letter to Defendant requesting the number of persons employed by Defendant in 1997 and 1998. Though Defendant agreed to provide the information requested, Plaintiff had received no such discovery by the filing of the instant Motion.

Defendant has since provided the number of persons employed in 1997 and 1998, but only those employed at the El Paso Travelodge-City Center. Plaintiff argues that El Paso Travelodge-City Center is not the Defendant in this case. Hence, to fully comply with Plaintiff's interrogatory, Plaintiff argues, Defendant must disclose the number of persons employed by WW Lodging Limited, L.L.C. in all of its hotels, not just El Paso Travelodge-City Center.

Defendant, for its part, contends that Plaintiff is entitled only to information concerning the number of employees of El Paso Travelodge-City Center; that the number of persons employed at the other two entities named in the suit, WW Lodging Limited, L.L.C. and Westlodge Hospitality, Inc., is not relevant to this case. In any event, Defendant argues, Plaintiff's Complaint designates WW Lodging Limited, L.L.C. and Westlodge Hospitality, Inc. as entities that are "d/b/a El Paso Travelodge-City Center." If Plaintiff intended to sue each party as a separate entity, Defendant argues, it should have so noted that in its Complaint. The Court agrees. Plaintiff's allegations involve acts of discriminatory behavior by the management at El Paso Travelodge-City Center. There is no allegation regarding employment practices at other hotels owned or managed by Westlodge Hospitality, Inc. or WW Lodging Limited, L.L.C. Thus, that information is not relevant. Hence, after due consideration, the Court is of the opinion that Plaintiff's motion to Compel as to Interrogatory Number 6 should be denied insofar as it

requests disclosure of the number of employees at entities other than El Paso Travelodge-City Center.

Finally, the Court is inclined to impose sanctions in this case. In that respect, the Court notes that the Federal Rules of Civil Procedure relating to discovery incorporate a sanctions mechanism:

If the motion [to compel] is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall . . . require the party . . . whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees

FED R. CIV. P. 37(a)(4)(A). In this case, Plaintiff and Defendant eventually came to an agreement with regard to most of their discovery disputes, but this did not transpire until Plaintiff's Motion to Compel had been filed. Moreover, while the Court did not grant the whole of Plaintiff's motion, it did grant some part of it. Hence, the Motion to Compel was not without merit. Accordingly, the Court finds that Defendant must pay to Plaintiff the expenses, including attorney's fees, which Plaintiff incurred in bringing the instant Motion to Compel, except as to the requests which the Court has expressly denied. Hence, after due consideration, the Court is of the opinion that the following orders should enter:

IT IS HEREBY ORDERED that Plaintiff the Equal Employment Opportunity Commission's "Motion to Compel Defendant WW Lodging Limited, L.L.C. to Respond to Discovery Requests" is **GRANTED IN PART** and **DENIED IN PART**, as outlined above.

IT IS FURTHER ORDERED that **on or before June 25, 2001**, Plaintiff submit to the Court an affidavit setting forth the **expenses**, including **attorney's fees**, Plaintiff incurred in bringing the instant Motion to Compel.

IT IS FINALLY ORDERED that on or before July 6, 2001, Defendant **SHOW CAUSE** why the Court should not award the expenses Plaintiff sets forth, if any, by affidavit as provided herein.

SIGNED this **15th** day of **June, 2001**.



THE HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE