

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

No. CIV-01-0732 WJ/RLP

STERLING BROTHERS CONSTRUCTION,
INC.,

Defendant.


**ORDER OVERRULING
PLAINTIFF EEOC'S OBJECTIONS TO MAGISTRATE'S ORDER
GRANTING DEFENDANT'S MOTION TO COMPEL**

THIS MATTER comes before the Court pursuant to Plaintiff EEOC's Objections to Magistrate's Order Granting Defendant's Motion to Compel (Docket No. 45). According to Rule 72(a) of the Federal Rules of Civil Procedure: "The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed.R.Civ.Pro. 72(a). The Seventh Circuit has stated that a magistrate's decision, to be found erroneous ". . . must strike us as more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish." Parts & Elec. Motors, Inc. v. Sterling Elec., Inc., 866 F.2d 228, 233 (7th Cir. 1988). No such odor is detectable from Judge Puglisi's Order Granting Defendant's Motion to Compel. While the Court seriously considered imposing additional attorney's fees for what the Court considers to be a frivolous appeal of a valid discovery order, the Court notes that counsel for Defendant and counsel for Plaintiff were able to resolve some discovery matters in another appeal of a different discovery order. Accordingly, Defense counsel did not totally waste her time or her client's money in attending the May 14, 2002 court hearing.

The Court will, however, leave the \$250.00 Rule 37(a) sanction in place, as the Court notes that Judge Puglisi afforded Plaintiff the opportunity to request a hearing on the reasonableness of the Rule 37(a) sanction award and Plaintiff chose not to request such a hearing.

IT IS THEREFORE ORDERED that Plaintiff EEOC's Objections to Magistrate's Order Granting Defendant's Motion to Compel (Docket No. 53) are hereby overruled.

IT IS FURTHER ORDERED that the Order Granting Defendant's Motion to Compel (Docket No. 45) shall remain in full force and effect and Plaintiff shall produce those items ordered to be produced by Judge Puglisi.

A handwritten signature in black ink, appearing to be "A. J. Puglisi", is written over a horizontal line.

UNITED STATES DISTRICT COURT JUDGE