

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff)	
v.)	Case No. CIV-05-1148-C
)	
GARDNER MANAGEMENT GROUP,)	
L.L.C.; GARDNER TANENBAUM)	
GROUP, L.L.C.; and G & G)	
CONSTRUCTION,)	
)	
Defendants)	

ORDER

Defendants filed a Motion to Compel Compliance with Subpoena Duces Tecum of Investigator Robert Hill, and Request for Expedited Consideration, seeking to compel the continuation of deposition and compliance with subpoena duces tecum directed at EEOC Investigator Robert Hill. At the direction of the Court, Plaintiff filed an expedited response and the matter is now at issue.

Defendants seek an order from the Court directing Plaintiff to comply with a subpoena duces tecum served on Mr. Hill in conjunction with the notice to depose Mr. Hill. According to Defendants, although Mr. Hill appeared for his deposition, it became apparent that Plaintiff had failed to comply with the subpoena duces tecum. Defendants also seek an order directing Mr. Hill to appear for a continuation of his deposition, arguing that due to the failure to comply with the subpoena and the obstructionist tactics of Plaintiff's counsel, Defendants were unable to obtain necessary information from Mr. Hill.

The Court has reviewed the material attached to Defendants' motion, including the excerpts from the deposition of Mr. Hill. Based on that review, Defendants' motion will be denied. As for the subpoena duces tecum, Plaintiff asserts that it has produced the requested information and Defendants have offered no evidence disproving that assertion. That the documents were not produced in the format preferred by Defendants does not establish that they were not produced. Indeed, the deposition excerpts from Mr. Hill make clear that when shown a document, he was able to answer questions about that document. That Defendants' or Mr. Hill's job would have been easier had the file been maintained as originally created by Mr. Hill does not mean that the requested materials were not produced.*

The Court does not find that Plaintiff's counsel acted inappropriately during the deposition. Rather, the objections lodged were necessary to protect the privilege asserted. The Court's April 10 Order did not address the privileges asserted by Plaintiff, finding the issue mooted by Plaintiff's withdrawal of its administrative finding as evidence at trial. So it was not unreasonable for counsel to continue to assert those privileges. But again the Court finds it unnecessary to decide whether and what privileges exist, as the quality and/or extent of Plaintiff's investigation is not relevant to determining whether the claimants were subject to a discriminatory work environment. Thus, much of the questioning of Mr. Hill by Defendants' counsel sought information that lacked any relevance and would not be

* The Court notes that this is not an instance where the documents were produced in a disorganized fashion simply to impede discovery. Rather, it is clear that once the documents left Mr. Hill's possession they were, in the normal course of business, reorganized.

admissible at trial. Therefore, the Court sees no need to permit Defendants to continue expending the resources of the parties on a meaningless expedition.

For the reasons set forth herein, Defendants' Motion to Compel Compliance with Subpoena Duces Tecum of Investigator Robert Hill (Dkt. No. 48) is DENIED.

IT IS SO ORDERED this 26th day of April, 2007.



ROBIN J. CAUTHRON
United States District Judge