

EDNY Grants Motion for Sanctions, Including Attorneys' Fees, for Unjustified and Ongoing Discovery Violations

Article By:

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In an action alleging breach of a commercial equipment lease agreement ([Interpool, Inc., v JJS Transportation & Distribution Co., Inc.](#)), the District Court for the Eastern District of New York was called upon to address Defendant's ongoing discovery failures. Specifically, Defendant – for more than three months – failed to produce documents responsive to the litigation. As relevant here, Plaintiff filed a motion to compel discovery and sought sanctions in the form of attorneys' fees it was "forced to incur as a direct result" of Defendant's failure to fulfill its discovery obligations ("Motion").

In response to the Motion, the Court ordered Defendant to respond to Plaintiff's document demands by October 31, 2022, or the Court would consider a renewed application for costs and sanctions. (See Electronic Order dated October 17, 2022.)

October 31, 2022, came and went without a response from Defendant or its counsel.

Plaintiff moved to renew its motion to compel. (DE 19.) In response Defendant's counsel advised only that the production deadline was missed because Defendant failed to provide counsel with any documents. This advisement came without any amplification or justification. And so, the Court held Defendant failed to provide a reasonable excuse for its defiance of the Court's October 17 Order. Additionally, the Court noted that Defendant had yet to produce a single document responsive to Plaintiff's August 5, 2022, demands.

In analyzing the propriety of imposing a sanction where, as here, a party failed to comply with a pre-trial order, Magistrate Judge James M. Wicks detailed the applicable standards set forth under Rules 16 and 37(b)(2)(A)(ii)-(vii), which govern the Court's authority to impose sanctions. The Court then discussed the several factors it must consider when determining the appropriate sanction to impose. In reaching its conclusion to impose an award of attorneys' fees, the Court noted that not only was Defendant's counsel made aware "both in writing and verbally" of the Court's Order and the "consequences of violating" the Order, but further noted that the record "belies" Defendant's counsel's assertion that its client was not able to "gather and transmit responsive documents within the time constraints placed on it." Indeed, Defendant's counsel's argument was made "upon information and belief," and failed to explain Defendant's inability to respond to Plaintiff's request in a timely fashion "in the first instance, by the date the [parties' counsel subsequently agreed to as the date by when a response would be provided], or by the date the Court ordered" Defendant to

respond. In fact, no affidavit or declaration from Defendant was submitted to the Court to support the purported cause of the failure. Therefore, the Court found, “Defendant has not only disregarded a clear Court order, but continues to do so. Incredibly, Defendant has yet to produce any documents responsive to Plaintiff’s August 5, 2022, document demands.”

Based upon this willful failure and the Defendant’s “insouciance” the Court determined that Defendant’s continued non-compliance with discovery was not justified and imposed as the appropriate sanction the costs and fees incurred by Plaintiffs in obtaining discovery.

This decision is a good reminder that discovery obligations are not to be taken lightly. Indeed, a party cannot casually shirk its obligations or rely solely upon the testimony of counsel to explain away a client’s discovery failings. Rather, any failure must be predicated upon a reasonable excuse that is demonstrable and supported by sworn statements attesting to the same.

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