

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|                              |   |                        |
|------------------------------|---|------------------------|
| EQUAL EMPLOYMENT OPPORTUNITY | § |                        |
| COMMISSION,                  | § |                        |
| <i>Plaintiff,</i>            | § |                        |
|                              | § |                        |
| vs.                          | § | CIVIL ACTION H-06-3062 |
|                              | § |                        |
| MIKE ALBERT LEASING, INC.,   | § |                        |
| <i>Defendant.</i>            | § |                        |

**ORDER**

This discovery dispute has its genesis in plaintiff's last minute cancellation of the deposition of Mike Hardesty, noticed for July 17, 2007 in Cincinnati, Ohio, due to a recent change in counsel and the need to review documents.<sup>1</sup> Defense counsel objected to the cancellation because he had purchased non-refundable airline tickets to travel to Ohio. Counsel cross-noticed the Hardesty deposition in order to preserve his ability to seek costs for the travel in the event the deposition did not go forward. Plaintiff's counsel did not appear at the July 17, 2007 cross-noticed deposition.

Plaintiff now seeks to depose Hardesty, as well as other four other corporate representatives of defendant.<sup>2</sup> Defense counsel objects to a second deposition of

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<sup>1</sup> The district court has referred the pending motions (Dkts. 30, 32, 35) to this magistrate judge for resolution (Dkts. 31, 39, 40).

<sup>2</sup> Plaintiff has noticed the depositions of Hardesty, Jim Fitzgerald, Marty Betagole, Mike Pohl, and Steve Johnson for August 14-16, 2007 in Cincinnati, Ohio, where they live and work.

Hardesty, as well as the other depositions, because all the depositions could have taken place during his July 17, 2007 trip to Ohio.

As is the case with most discovery disputes, compromise is in order. Plaintiff's counsel's last minute cancellation of the Hardesty deposition was inconvenient and apparently a result of poor planning. Plaintiff's counsel's conduct did cause defense counsel to incur expenses that could have been avoided and thus should be compensated. However, that conduct does not rise to the level of sanctionable misbehavior that should preclude plaintiff from needed discovery, including the deposition of Hardesty, and defense counsel's refusal to cooperate on further depositions is unreasonable. It is therefore

ORDERED that Plaintiff's motion for protection from defendant's "cross-notice" of Mike Hardesty (Dkt. 30) is granted in part and denied in part. It is further

ORDERED that Plaintiff's counsel shall pay defense counsel for his travel costs related to the July 17, 2007 deposition. Defense counsel shall provide receipts or other evidence to support the actual amount of his reimbursement request. It is further

ORDERED that Defendant's motion for protective order (Dkt. 32) is denied and Plaintiff's motion to compel depositions and for expedited consideration (Dkt. 35) is granted. It is further

ORDERED that counsel shall cooperate to schedule plaintiff's depositions of Hardesty, Fitzgerald, Betagole, Pohl, and Johnson in Cincinnati, Ohio on August 14-16 as noticed, or at other mutually agreed upon times prior to the discovery deadline of September 28, 2007.

Signed at Houston, Texas on August 8, 2007.

  
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Stephen Wm Smith  
United States Magistrate Judge