

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|-----------------------------------|---|---------------------|
| E.E.O.C., et al. |) | CASE NO. 1:06CV2337 |
| |) | |
| Plaintiffs, |) | JUDGE JOHN R. ADAMS |
| |) | |
| vs. |) | |
| |) | |
| Spitzer Management, Inc., et al., |) | <u>ORDER</u> |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

Trial commenced in this matter on January 14, 2013. During the course of trial, Plaintiffs objected to certain exhibits being offered by Defendants, asserting that fax headers had been removed from the documents. Thereafter, the Court ordered Defendants to produce originals of any and all documents provided in discovery to allow Plaintiffs to compare those originals with the documents they actually received during discovery. Through that process, the Court learned two important facts: 1) Defendants had not maintained the originals of all of their documents, even those being utilized as exhibits at trial, and 2) Plaintiffs had not received some of the documents despite proper discovery requests.

Based upon these facts, Plaintiffs made an oral motion for a mistrial on January 22, 2013. The Court then allowed Plaintiffs the duration of that day to fully examine the documents that had just been provided to them at roughly 8 a.m. on January 22. The parties returned on January 23, 2013, and the Court allowed for an hour of argument from both parties. The Court also noted that at roughly 11 p.m. the prior evening, Plaintiffs had formally moved for default judgment based upon the failure to provide proper discovery. Plaintiffs' motion included the fact that at

roughly 4 p.m. on January 22, 2013, they received additional documents from Defendants – documents that were requested as early as 2010 and never produced.

Upon hearing all of the parties' arguments, the Court orally granted the motion to mistrial. The Court also set a briefing schedule as follows:

Plaintiffs shall have seven days to file a motion for fees and costs and provide all of the supporting documentation for said motion. Plaintiffs may also use these seven days to file any supplement they desire in support of the motion for default judgment. Defendants shall have seven days to oppose the motion for fees. Moreover, Defendants shall have 14 days from the date of filing to oppose the motion for default judgment. It is the Court's intention that the parties consolidate briefing on these issues. Accordingly, each side shall be allocated 30 pages to address these issues. If more pages are necessary, the parties must move for leave and explain with specificity the need for additional pages.

Within 4 days of Defendants' response, Plaintiffs may file any reply. Absent leave of court, the reply shall not exceed 10 pages.

Once briefing is complete, the Court will place in writing its formal analysis of the need for the mistrial in this matter, along with addressing the parties' arguments on the proper additional sanction, if any, that should be imposed in this matter.

IT IS SO ORDERED.

DATED: January 23, 2013

/s/ John R. Adams
Judge John R. Adams
UNITED STATES DISTRICT COURT