

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

Transmittal Sheet for Opinions for Posting

Will this opinion be Published? No

Bankruptcy Caption: In re Headline Promotions, Inc.

Bankruptcy No. 00 B 24010

Adversary Caption: Headline Promotions, Inc. v. Marlene Trupiano, individually, and d/b/a USA Sports Network and Stuart J. Radloff, Receiver

Adversary No. 00 A 00849

Date of Issuance: July 23, 2001

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff: Forrest L. Ingram, Esq., Forrest L. Ingram, P.C., 79 West Monroe Street, Suite 1210, Chicago, IL 60603-4907

Attorney for Defendant: Ariel Weissberg, Esq., David C. Thollander, Esq., Weissberg and Associates, Ltd., 401 South LaSalle Street, Suite 403, Chicago, IL 60605

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
HEADLINE PROMOTIONS, INC.,)	Bankruptcy No. 00 B 24010
)	Chapter 11
Debtor.)	Judge John H. Squires
_____)	
)	
HEADLINE PROMOTIONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
MARLENE TRUPIANO, individually, and)	Adversary No. 00 A 00849
d/b/a USA SPORTS NETWORK, and)	
STUART J. RADLOFF, Receiver,)	
)	
Defendants.)	

MEMORANDUM OPINION

This matter comes before the Court on the request for an award of attorney’s fees and expenses incurred by Headline Promotions, Inc. (the “Plaintiff”) in connection with a motion in limine it filed under Federal Rule of Bankruptcy Procedure 7037 against Marlene Trupiano and USA Sports Network (the “Defendants”) for their failure to comply with the Plaintiff’s discovery requests and the Court’s Order of June 5, 2001. For the reasons set forth below, the Court awards the Plaintiff the sum of \$3,314.00 for its attorney’s fees, plus \$32.88 in expenses which are taxed against the Defendants.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

II. FACTS AND BACKGROUND

On June 5, 2001 the Court entered an Order which compelled the Defendants to belatedly answer interrogatories and produce documents by June 6, 2001. They failed to comply with the Order by June 6, 2001, or by the date of the trial in this adversary proceeding which commenced on June 11, 2001. The Plaintiff then filed a motion in limine under Bankruptcy Rule 7037 to bar further filings, testimony and documentary evidence, and for the entry of judgment in its favor based on these failures by the Defendants. The Court granted, in part, the requested relief and barred the testimony of Defendant Marlene Trupiano for her failure to answer the propounded interrogatories. The Court further granted the Plaintiff its reasonable attorney's fees and expenses upon receipt of an affidavit with respect to the fees and expenses incurred as a result of the Defendants' failure to comply with the Court's Order.

On June 18, 2001, Forrest L. Ingram, one of the Plaintiff's attorneys, filed an amended affidavit which detailed over 18 hours of time expended in the sum of \$5,152.00, plus expenses for photocopying and postage in the amount of \$32.88. The Defendants object to the fees sought as unreasonable and excessive. They contend that

the requested fees include services for research, review of documents, and trial preparation regarding the Plaintiff's compliance with pretrial orders, which should not be taxed to the Defendants. They conclude that the fees should be reduced to an unspecified amount.

III. DISCUSSION

Under Federal Rule of Civil Procedure 37, which is applicable here pursuant to Federal Rule of Bankruptcy Procedure 7037, a court may impose sanctions, including an award of attorney's fees and expenses, upon a party who fails to comply with discovery and scheduling orders. Specifically, Rule 37(a)(4) provides in relevant part:

- (a) A party . . . may apply for an order compelling disclosure or discovery as follows:
 - (4) Expenses and Sanctions.
 - (A) *If the motion [to compel disclosure or discovery] is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party . . . whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.*

FED. R. CIV. P. 37(a)(4) (emphasis supplied).

A court's decision to sanction and its choice of an appropriate sanction are within its broad discretion. See In re Golant, 239 F.3d 931, 937 (7th Cir. 2001); Melendez v.

Illinois Bell Telephone Co., 79 F.3d 661, 670-71 (7th Cir. 1996); Scaggs v. Consolidated Rail Corp., 6 F.3d 1290, 1295 (7th Cir. 1993). “Sanctions are proper upon a finding of wilfulness, bad faith, or fault on the part of a noncomplying litigant.” Melendez, 79 F.3d at 671 (citation omitted). The Seventh Circuit has concluded that a party acted in bad faith when it knew that disclosure of materials was required by the court’s discovery orders and failed to produce them. Id. It further concluded that a party was at fault when it should have known that disclose was required by the court’s discovery orders and yet failed to produce the materials. Id. “Fault does [not] speak to the noncomplying party’s disposition at all, but rather only describes the reasonableness of the conduct—or lack thereof—which eventually culminated in the violation.” Long v. Steepro, 213 F.3d 983, 987 (7th Cir. 2000) (quotation omitted). “The great operative principle of Rule 37(a)(4) is that the loser pays.” Rickels v. City of South Bend, Indiana, 33 F.3d 785, 786 (7th Cir. 1994) (quotation omitted). Rule 37(a)(4) is a fee-shifting rule. The winner is entitled to fees unless the opponent establishes that his position was “substantially justified.” Id. at 787.

Pursuant to the June 5, 2001 Order, the Court granted the Plaintiff’s motion to compel discovery, which required the Defendants to belatedly answer interrogatories and produce requested documents. The Defendants disregarded the Court’s June 5, 2001 Order and failed to demonstrate that their actions were substantially justified. The Defendants’ decision to disregard that Order was more than carelessness or an “innocent misunderstanding [and] lack of familiarity with the law.” See Long, 213 F.3d at 988 (quotation omitted). It was dilatory conduct for which the imposition of attorney’s fees and expenses is proper.

After careful review of the parties' submissions, the Court concludes that some of the requested fees cover services which would have been necessarily incurred even without the discovery violations and failures of the Defendants. Therefore, the Court will tax only a portion of the requested fees against the Defendants in the sum of \$3,314.00, plus \$32.88 in expenses. Only reasonable attorney's fees incurred are appropriately awarded under the Rule. As in football, "piling on" excessive amounts for services rendered which would have been incurred anyway, absent the discovery violations, such as trial preparation, is inappropriate. Moreover, entries that reflect excessive and unreasonable expenditures of time, as well as unnecessary research performed in connection with the motion in limine, will not be allowed. Thus, the Court disallows the following entries for these reasons:

<u>Date</u>	<u>Time Expended</u>	<u>Amount Sought</u>	<u>Reason for Disallowance</u>
06/02/01	2.10 hours	\$672.00	trial preparation
06/02/01	.40 hours	\$128.00	trial preparation
06/03/01	1.20 hours	\$384.00	trial preparation
06/11/01	2.20 hours	\$110.00	excessive research
06/11/01	1.00 hours	\$320.00	trial preparation
06/11/01	.70 hours	\$224.00	trial preparation

These time entries total \$1,838.00 and will not be taxed against the Defendants.

The balance of the requested fees, \$3,314.00 (\$5,152.00 - \$1,838.00), is allowed and is taxed against the Defendants, as well as the detailed expenses for photocopying and postage in the sum of \$32.88.

IV. CONCLUSION

For the foregoing reasons, the Court awards the Plaintiff attorney's fees in the sum of \$3,314.00, plus \$32.88 in expenses under Bankruptcy Rule 7037, which are taxed against the Defendants.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:)	
HEADLINE PROMOTIONS, INC.,)	Bankruptcy No. 00 B 24010
)	Chapter 11
Debtor.)	Judge John H. Squires
_____)	
)	
HEADLINE PROMOTIONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
MARLENE TRUPIANO, individually, and)	Adversary No. 00 A 00849
d/b/a USA SPORTS NETWORK, and)	
STUART J. RADLOFF, Receiver,)	
)	
Defendants.)	

ORDER

For the reasons set forth in a Memorandum Opinion dated the 23rd day of July, 2001, the Court hereby awards Headline Promotions, Inc. attorney's fees in the sum of \$3,314.00 and expenses in the amount of \$32.88 pursuant to Federal Rule of Bankruptcy Procedure 7037, which are taxed against Marlene Trupiano and USA Sports Network.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List