

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 06-cv-02206-JLK

JANET STUART SMITH and
JUSTINE SCOTT TAYLOR,
individually and as co-personal representatives of
THE ESTATE OF JUSTINE H. SMITH, deceased,

Plaintiffs,

v.

SLIFER SMITH & FRAMPTON/VAIL ASSOCIATES
REAL ESTATE, LLC and
PETER W. SEIBERT, JR.,

Defendants.

ORDER

Kane, J.

This matter is before me on Defendants' Objection (Doc. 112) to the Recommendation of the Magistrate Judge Regarding Plaintiffs' Motion for Sanctions for Destruction of Evidence (Doc. 111). With meticulous care I have reviewed the Recommendation, Defendants' Objection, the Plaintiffs' Response to Defendants' Objection (Doc. 17), as well as the underlying briefs and the entire Court file. Review is not *de novo*, as Defendants suggest, but I have done more than review for clear error or abuse of discretion.

By any standard of review, the Magistrate Judge's Recommendation gave careful and deliberate consideration to the Motion for Sanctions and the Recommendation is sound, without legal error, and based upon substantial evidence. The recommended sanctions are not dispositive of the case, nor are they unfair. They are appropriate and

demonstrate restraint by the Magistrate Judge. Finally, I note Defendants and their counsel have employed *ad hominem* comments and sarcasm regarding Plaintiffs' counsel and impertinent descriptions of the Magistrate Judge's conduct and rulings in this matter. Such are counterproductive to the objective of persuasion.

Based on my considered review of the legal and factual bases underpinning Plaintiffs' Motion for Sanctions and the Magistrate Judge's Recommendation, the Objection to the Recommendation of the Magistrate Judge is OVERRULED and the Recommendation is ADOPTED, incorporated herein by reference, and made an ORDER of this Court. The Defendants are hereby advised that any further sanctions which may be imposed will be more severe and may include entry of default judgment against them and each of them.

The next item of business in this case will be consideration of the pending Motion in Limine (Doc. 59) and Motion for Summary Judgment (Doc. 60), both of which have been fully briefed and which I will get to as soon as my currently heavy trial schedule will allow. In the interim, the parties are advised that if they would like a reference for settlement, the reference would be to a different Magistrate Judge.

Dated: February 25, 2009.

BY THE COURT:

s/John L. Kane

SENIOR U.S. DISTRICT JUDGE