

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JEROLD W. BARRINGER,)
Individually and as trustee of)
the KELBAR ASSOCIATES)
TRUST, LINDA M.)
BARRINGER, JANET E.)
CHOTT-BEASELY, MERLE)
WERNLE, STATE OF ILLINOIS)
DEPARTMENT OF REVENUE,)
and RON JENKINS as)
MONTGOMERY COUNTY,)
ILLINOIS, TREASURER,)
)
Defendants.)

No. 14-cv-3132

OPINION

THOMAS P. SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE:

This matter comes before the Court on the United States' Motion to Compel Discovery and Disclosures from Defendant Jerold W. Barringer (d/e 33) (Motion). The Motion asks this Court to compel defendant Jerold Barringer to (1) make his Federal Rule of Civil Procedure 26(a)(1) disclosures to the United States, (2) produce documents responsive to the United States' requests for production notwithstanding any objections; (3) respond to interrogatories notwithstanding

any objections, and (4) award it fees in accordance with Federal Rule of Civil Procedure 37.

The United States served the Motion by mail on Defendant Jerold Barringer (Barringer) on April 28, 2015. The Local Rules of this Court require Barringer to file a written response to the Motion within fourteen days after service. CDIL-LR 7.1(B)(2). Three additional days were added to the response time because the United States served Barringer by mail. Fed. R. Civ. P. 5(b)(2)(C) and 6(d). Therefore, Barringer's response was due on May 15, 2015. Barringer did not respond, and has not filed any response as of yet. Pursuant to the Local Rules, this Court presumes Barringer has no opposition to the Motion because he has chosen not to respond. CDIL-LR 7.1(B)(2). The Court hereby compels Barringer to produce the requested discovery and disclosures.

The Motion asks for attorney fees under Federal Rule of Civil Procedure 37(a). Rule 37(a) states, in relevant part:

If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both, to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(5)(A). The Rule, quoted above, requires this Court to award fees after notice and opportunity to be heard unless one of the three exceptions applies. The Court, therefore, directs the Plaintiff United States to file and serve by June 5, 2015, a statement under penalty of perjury setting forth the amount of fees requested and the basis for the amount of the request. The Court sets the request for fees for a hearing on Thursday, June 25, 2015 at 10:30 a.m. Plaintiff United States will have the opportunity to present additional relevant information regarding its right to the fees and the amount of the fees, and Defendant Jerold W. Barringer has the opportunity at that hearing to respond, including the right to present evidence relevant to request for fees.

THEREFORE Plaintiff United States' Motion to Compel Discovery and Disclosures from Defendant Jerold W. Barringer (d/e 33) is ALLOWED in part. Defendant Jerold Barringer is hereby ordered to (1) make his Federal Rule of Civil Procedure 26(a)(1) disclosures to the United States, (2) produce documents responsive to the United States' requests for production notwithstanding any objections; and (3) respond to interrogatories notwithstanding any objections. Defendant Jerold W. Barringer is ordered to make all such disclosures and discovery responses in writing signed in the manner required by the applicable Federal Rules of Civil Procedure by June 12, 2015.

With respect to the Plaintiff United States' request for attorney fees, the Plaintiff United States shall file and serve by June 5, 2015, a statement under penalty of perjury (Affidavit) setting forth the amount of fees requested and the basis for the amount of the request. The Court sets the Plaintiff United States' request for a hearing before this Court on Thursday, June 25, 2015, at 10:30 a.m., to be held in Courtroom III in the United States Courthouse located at 600 East Monroe Street, Springfield, Illinois. Plaintiff United States shall cause the person who executes the Affidavit (Affiant) to appear at the hearing and be available for cross examination. The United States may also present additional relevant evidence in support of its request for fees, including testimony by the Affiant. Defendant Jerold Barringer shall have the opportunity to appear at the hearing to respond, including the opportunity to cross examine the Affiant and to present relevant evidence in opposition to the request for fees.

ENTER: May 22, 2015

s/ Tom Schanzle-Haskins
UNITED STATES MAGISTRATE JUDGE