

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LOCAL 513, INTERNATIONAL UNION)
OF OPERATING ENGINEERS, AFL-CIO,)
et al.,)
)
Plaintiffs,)
)
v.)
)
WEIDER EXCAVATING, L.L.C.,)
)
Defendant.)

No. 4:09-CV-429 CAS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs’ motion to compel. This case was filed under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1132 & 1145, and the Labor Management Relations Act, 29 U.S.C. § 185, claiming that defendant Weider Excavating, L.L.C. failed to file reports and make the periodic contributions to certain employee benefits funds as required under the collective bargaining agreements between defendant and its employees’ unions. The complaint also sought interest on the delinquent payments; liquidated damages; attorney’s fees; and court costs.

By Default Judgment dated January 14, 2010, the Court granted plaintiffs’ motion for default judgment in the total amount of Thirty-Four Thousand Three Hundred Eighty-Three Dollars and Ninety-Five Cents (\$34,383.95). In support of the present motion, plaintiffs’ counsel has submitted an affidavit that the deposition of defendant’s president, Dennis Weider, in aid of execution of the judgement was scheduled on April 13, 2010, and that a notice of the deposition and a request for production of documents was served on defendant, but that Mr. Weider failed to appear and made no attempt to reschedule the deposition. Plaintiffs now seeks an order compelling Mr. Weider to

appear for a deposition in aid of execution of judgment and further compelling defendant and Mr. Weider, jointly and severally, to reimburse plaintiff for the attorney's fees associated with bringing the motion. Defendant has not responded to the motion to compel in the time permitted for a response.

Rule 69(a) of the Federal Rules of Civil Procedure provides that a "money judgment is enforced by a writ of execution, unless the court directs otherwise." Rule 69(a)(1), Fed. R. Civ. P. Rule 69 further provides that the procedure on execution, and in proceedings in aid of execution, "must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Id. Finally, Rule 69 provides that in aid of a judgment or execution, a judgment creditor "may obtain discovery from any person--including the judgment debtor--as provided in [the Federal Rules of Civil Procedure] or by the procedure of the state where the court is located." Rule 69(a)(2), Fed. R. Civ. P.

Plaintiffs seek to take a post-judgment deposition in aid of execution of their judgment. This procedure is appropriate pursuant to Rules 69(a) and 30 of the Federal Rules of Civil Procedure. It appears to the Court from the affidavit of plaintiffs' counsel that Mr. Weider was properly noticed for deposition but failed to appear. Plaintiffs' motion to compel discovery should therefore be granted.

Accordingly,

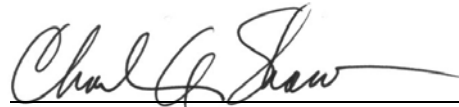
IT IS HEREBY ORDERED that plaintiffs' motion to compel is **GRANTED**. [Doc. 31]

IT IS FURTHER ORDERED that Mr. Dennis Weider, president of defendant Weider Excavating, L.L.C., shall appear for a post-judgment deposition and produce the records requested in the notice of deposition dated March, 30, 2010, at a reasonable time and place agreed upon by the parties, but no later than thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that defendant and Dennis Weider shall jointly and severally reimburse plaintiffs One Hundred Dollars (\$100.00) as reasonable attorney's fees incurred by plaintiffs in connection with bringing the motion to compel.

IT IS FURTHER ORDERED that failure to comply with this Memorandum and Order may result in sanctions.

IT IS FURTHER ORDERED that the Clerk of the Court shall mail separate copies of this order by both regular mail and certified mail, return receipt requested, to defendant Weider Excavating, L.L.C. at 33590 Highway 42 West, Vienna, Missouri 65582, and to Mr. Dennis Weider, at the same address.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of May, 2010.