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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

\$40,200.00 IN UNITED STATES CURRENCY,

Defendant.

ERIK L. CHRISTENSEN,

Claimant.

Case No. 3:14-CV-0229-LRH (VPC)
ORDER

This case is an *in rem* forfeiture action of the defendant currency \$40,200 seized by local law enforcement in Washoe County, Nevada in November 2013 from the claimant Erik Christensen (“claimant” or “Mr. Christensen”). On February 13, 2015, this court granted the motion of the plaintiff United States of America (the “government”) to compel, and the court awarded attorney’s fees and costs to the government for the preparation of that motion (#31). However, the court deferred the filing of any statement of fees and costs until the discovery dispute was resolved. *Id.*

The discovery dispute was never resolved. At the February 27, 2015 hearing, Bruce Lindsay, Esq. (“Mr. Lindsay”), claimant’s attorney, moved to withdraw as counsel for the claimant, the court granted the motion, but claimant was given time to obtain new counsel and to continue to meet and confer with the government to resolve the discovery dispute (#34). Given hearing on the posture of the case, the court ordered the government to file its statement of attorney’s fees and costs and to allow claimant the opportunity to respond. *Id.* The government

1 filed its statement through a declaration of counsel, which attested that the attorney's fees for
2 legal services in connection with the motion to compel totaled \$2,368.00 (#36). The claimant
3 filed a response in which he blamed his former counsel, Mr. Lindsay, for any failure to comply
4 with discovery obligations (#41). This drew a response from the government in which it
5 contended that the claimant's dispute with Mr. Lindsay had no bearing on the attorney's fees,
6 that the attorney's fees were properly assessed, and that claimant presented no viable opposition
7 to the question whether \$2,368.00 in attorney's fees was reasonable (#42). The government is
8 correct, but because claimant's chief argument in opposition to the attorney's fee award focused
9 on Mr. Lindsay's allegedly improper conduct in representing the claimant, the court issued an
10 order to Mr. Lindsay to show cause why he should not be liable for payment of some or all of the
11 attorney's fees awarded to the government (#52).

12 Mr. Lindsay responded and generally asserted five reasons why neither he nor his former
13 client should be liable for the attorney's fees (#54). First, Mr. Lindsay advised that apart from a
14 nominal initial fee, he represented the claimant *pro bono*. *Id.*, p. 1. Whether Mr. Lindsay
15 represented the claimant for a substantial fee or *pro bono* has no bearing whatsoever on his
16 professional duties to his client or the court. A lawyer cannot defend allegations of failing to
17 communicate with his or her client and opposing counsel based on the argument that a lawyer is
18 not being paid and "no deed goes unpunished." *Id.* Second, Mr. Lindsay stated that because he
19 and his client disagreed about how to respond to the outstanding discovery, Mr. Lindsay delayed
20 responding to government counsel to "buy a little extra time" to provide the requested discovery.
21 *Id.*, p. 2. This makes sense, and had the claimant adequately responded to the discovery requests
22 in due course, the entire matter would have been resolved. However, that is not what happened.

23 Third, Mr. Lindsay could not find documents on file to support claimant's statement that
24 he was unable to communicate with Mr. Lindsay. *Id.*, p. 2. The court invites Mr. Lindsay to
25 review the docket sheet, available on PACER, and more specifically, claimant's opposition to
26 Greg Addington re fees and expenses associated with discovery deficiencies and motion to
27 compel, filed on March 19, 2015 (#41).

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1 Fourth, Mr. Lindsay asserted that in any case, “the matter had been fully litigated for the
2 past few months;” therefore, “why any sanctions should be imposed on me or my client is
3 beyond the pale.” *Id.*, p. 3. The fact is, the case was not fully litigated because the government
4 was never provided with discovery responses to standard discovery requests propounded in *in*
5 *rem* forfeiture cases. Moreover, the time for arguing that imposition of sanctions is “beyond the
6 pale” was last December when Mr. Lindsay filed claimant’s response to motion to compel (#27).
7 Mr. Lindsay did not address the fairness of sanctions at all; instead, he improperly filed
8 supplemental responses to the disputed discovery in lieu of any legal argument about the merits
9 of the motion.

10 Finally, Mr. Lindsay offered this:

11 I ask the Court to step back a moment, and consider the
12 circumstances that exist here: My client makes a mechanical
13 device that trims marijuana plants. While legal in the States, it is
14 expressly illegal to manufacture, grow, or possess marijuana under
15 Federal Law. The requested discovery was for the names and
16 address of Erik Christensen’s clients. The growers of marijuana
(sic). Of course my client was reluctant to give up those names and
addresses, fearing the government would take those names and
addresses and arrest the growers.

17 (#54, p. 2.). Mr. Lindsay further noted, “[Mr. Christensen’s] clients grow marijuana and he and
18 his business associates have invented a machine to aid in the harvest of the plants.” *Id.*, p. 4.

19 These statements are the first to explain the claimant’s dilemma in supplying responses to
20 the government’s discovery requests. However, neither this dilemma nor any legal analysis
21 about how this should excuse the failure to comply with discovery was ever raised. In short, the
22 horse left the barn on February 13, 2015 when the court granted the government’s motion to
23 compel (#31).

24 The court has taken the trouble to recount these events for a simple reason: This court
25 very sparingly grants attorney’s fees in discovery disputes, and this court went to some trouble to
26 schedule hearings to facilitate the resolution of this dispute. Having no success, the court issued
27 the order to show, which drew claimant’s response that Mr. Lindsay, not he, should be
28 responsible for the attorney’s fees. Based on that contention, the court felt it proper to give Mr.

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Lindsay the opportunity to respond to the sole question of whether the \$2,368.00 of the government's attorney's fees should be paid by claimant, Mr. Lindsay, or both.

Having fully considered the claimant's and Mr. Lindsay's responses (#s 41 & 49), the court orders that the claimant, Erik Christensen, shall pay the sum of \$2,368.00 in attorney's fees to the United States within thirty days of the date of this order.

IT IS SO ORDERED.

Dated: June 22, 2015.


UNITED STATES MAGISTRATE JUDGE