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ADMITTED: USVI & DC

October 14, 2022

Email Only

James Hymes, Esq.
cc: Charlotte Perrell, Esq.
Stefan Herpel, Esq.
Joel Holt, Esq.

RE: Your Denial of Dates re Request for Rule 37 Conference in 650/65/342 (4th

letter) Attorney Hymes:

I am responding to your email of this date. You wrote:

From: Jim Hymes <jim@hymeslawvi.com>
Sent: Friday, October 14, 2022 1:01 PM
To: Carl@hartmann.attorney; Rauna Stevenson <rauna@hymeslawvi.com>
Cc: Charlotte Perrell <cperrell@dnfvi.com>; Stefan Herpel <sherpel@dnfvi.com>; Pamela Bayless <Pbayless@dnfvi.com>; JOEL HOLT <holtvi@aol.com>; Kim Japinga <kim@japinga.com>
Subject: RE: Re-send RE: Hartmann Letter to Hymes re Scheduling Rule 37 Conference prior to Manal's deposition

Atty. Hartmann:

I was out of my office all day yesterday and did not have an opportunity to review your email sent at 11 PM on Wednesday until today. I have never refused to meet with you in a rule 37 conference. Most recently we provided you with supplemental responses to discovery and asked if you still felt a rule 37 conference was necessary. Your 11 PM email indicates that it is. My cursory review of your email indicates to me that many of your assertions therein are misstatements of fact. I cannot possibly foresee resolving all this before the scheduled deposition of Manal. If you wish to cancel it that is on you. Otherwise she will be available as noticed. I will review your 11 PM email and respond as I time allows. Jim Hymes

Responding to your points individually

a. I was out of my office all day yesterday and did not have an opportunity to review your email sent at 11 PM on Wednesday until today

I am unclear as to import of your being out of your office or that I emailed at 11 p.m. on a Wednesday. Your secretary is the person who corresponds with me for some reason—and she was clearly present. In any case, you have received and read the letter today, and there are several days until the deposition. Instead of writing your email and my responding, we could have covered the salient points in an hour today. But as that has not happened, I am available both Monday and Tuesday—and because of the long delay in getting a date and time for a conference will converse with you over the weekend or in the evening.

b. . I have never refused to meet with you in a rule 37 conference.

While you have not overtly refused to meet, you have not provided the requested availability for more than a month now. This is the same in effect. You have variously stated that you had to speak with your client first, that you were going to supply more discovery responses first, that you HAD supplied more responses. Often this was accompanied by an inquiry as to whether this alleged supplementation would obviate the need to provide the requested availability for the rule 37 conference. In each such instance I responded in the negative.

c. Most recently we provided you with supplemental responses to discovery and asked if you still felt a rule 37 conference was necessary. Your 11 PM email indicates that it is.

This is inaccurate. Each time you have asked, I have responded immediately. In the instance you cite, my 11 pm letter was not the late response you suggest. Here is the exchange. On Thursday, October 6th, you asked whether a Rule 37 conference was still necessary. An hour and thirty-nine minutes later, **six days before my Wednesday letter that you suggest was so untimely**, I succinctly responded that “yes” it was. No communications or availability was then forthcoming from you.

From: Rauna Stevenson <rauna@hymeslawvi.com>

Sent: Thursday, October 6, 2022 2:59 PM

To: Carl@hartmann.attorney

Cc: Kim Japinga <kim@japinga.com>; Joel Holt <Holtvi@aol.com>; Charlotte Perrell <Cperrell@dnfvi.com>; Stefan Herpel <sherpel@dnfvi.com>; Pamela Bayless <Pbayless@dnfvi.com>; Jim Hymes <jim@hymeslawvi.com>

Subject: Rule 37 items from 2nd req to Admit and existing Rule 37 Request as to earlier Manal Responses in 65/342

Dear Attorney Hartman:

Please review the answers to your previously propounded discovery in connection with this case and advise me if you still think a Rule 37 discussion is necessary.

Thank you for your advice and assistance in this regard.
Sincerely yours
James L. Hymes, III

and

From: carl@hartmann.attorney <carl@hartmann.attorney>
Sent: Thursday, October 6, 2022 4:40 PM
To: Rauna Stevenson <rauna@hymeslawvi.com>; Jim Hymes <jim@hymeslawvi.com>
Cc: 'Kim Japinga' <kim@japinga.com>
Subject: RE: Rule 37 items from 2nd req to Admit and existing Rule 37 Request as to earlier Manal Responses in 65/342
Yes....and Hartmann has two “n”s at the end.
Carl J. Hartmann III

d. My cursory review of your email indicates to me that many of your assertions therein are misstatements of fact. I cannot possibly foresee resolving all this before the scheduled deposition of Manal. If you wish to cancel it that is on you.¹ Otherwise she will be available as noticed. I will review your 11 PM email and respond as I time allows.

First, I do not understand why your review was cursory when your client is a claimant seeking more than \$25 million in property, and whose deposition in a foreign country has been both delayed and accommodated. Second, the fact that you feel facts asserted prior to a Rule 37 conference are misstatements is why the Rules mandate the conference. That is a *sine qua non*. Nor do I see why this would be any different than any other Rule 37 conference. Certainly it is not a valid basis for again, AGAIN not providing me with your availability within 15 days -- prior to the deposition. Third, Joel Holt has noticed the deposition—not me, and I could not cancel it if I wished. Moreover, it has been a long arduous path to getting one set—but I will seek relief from the Court when the deposition is adjourned absent critical documents, responses and compliance with Rule 37.

That is a good point to inject the actual Rule into this discussion--having first asked for a conference more than a month ago—more than a month before her deposition.

Rule 37-1. Pre-Motion Discovery Conferencing Duties of All Counsel.

(a) Good Faith Negotiation Requirement. Prior to filing any motion relating to discovery pursuant to Rules 26 through 37, other than a motion relating to depositions under Rule 30, counsel for the parties and any self-represented parties **shall confer in a good faith effort to eliminate the**

¹ I am unclear why Hamed's deposition should be cancelled due to your client's repeated and intentional pre-deposition violations of Rule 37, as they are set forth below.

necessity for the motion — or to eliminate as many of the disputes as possible.

(b) Demanding Party's Specification Letter

The party requesting resolution of a discovery dispute shall serve a letter on other counsel identifying each issue and/or discovery request in dispute, briefly stating the moving party's position with respect to each (and providing any legal authority), and specifying the terms of the discovery order to be sought.

(c) Conference Arrangements and Personal Negotiations Requirement

(1) Facilitating a Conference. After service of the letter request, it shall be the responsibility of counsel for the requesting party to make any necessary arrangements for a conference.

(2) Personal Discussions Requirement. To the extent practicable, counsel are encouraged to meet in person at a mutually convenient location. If, in the consideration of time and/or resources, counsel agree that meeting in person is not practicable, the conference may take place telephonically or by video conferencing. Mail or e-mail exchanges are not sufficient.

(3) Completion of Negotiations. **Unless otherwise provided by stipulation of the parties, or by written order of the court, the conference shall be completed within 15 days after the moving party serves a letter requesting such conference.**

NOTE

Rule 37-1 is a specific requirement — set forth in a rule accompanying the basic sanction provisions — approved by a virtually unanimous Advisory Committee to further state the requirement of good-faith negotiation prior to lodging a discovery motion, and the practice of requiring a letter identifying each issue and/or discovery request in dispute. "To the extent practicable, counsel are encouraged to meet in person at a mutually convenient location."

Thus, you have violated your agreement as to the initial Rule 37 conference with Joel as to even the most basic document in a deposition of a foreign national—her passports. You have violated the Rule by more than two weeks with regard to both the September 18, 2022 request as BFC Appliance, and the September 20, 2022 request regarding Manal's answers. Moreover, you ignored my gentle reminder of this failure of the September 21st.

From: Carl Hartmann <carl@carlhartmann.com>

Sent: Wednesday, September 21, 2022 11:24 AM

To: 'Joel Holt' <joelholtpc@gmail.com>; 'Jim Hymes' <jim@hymeslawvi.com>

Cc: 'Stefan Herpel' <sherpel@dnfvi.com>; 'Rauna Stevenson'

<rauna@hymeslawvi.com>; 'Charlotte Perrell' <Cperrell@dnfvi.com>; 'Jim

Hymes' <jimhymes@gmail.com>; 'Kim Japinga' <kim@japinga.com>

Subject: RE: Manal depo

All:

I'm mindful that you all have set a very fast scheduling order--that written discovery has ended and all fact depositions have to be completed by December 31st. I understand the rush to get these depositions done.

I'd like to point out that there are three Rule 37 requests outstanding in 65/342 (Manal, Isam and Fathi). These should be addressed and solutions found quickly. There are a number of important facts which must be clarified so time is not wasted on basic issues in deposition.

These need to be discussed as soon as possible.

Carl

Technically I guess that became either third or fourth violation of the rule 15 days after that. And before the deposition, you will have violated it regarding the October 3rd request.

Thus, your letter does not change the facts. You can give me a time and date to have the conference before the deposition as required at which time you can, in good faith, inform me of your client's positions (as to which positions, she can be questioned in deposition) or you can further refuse. If you refuse, I will file the necessary motion to compel and to allow a continuation of the deposition until you have provided discovery responses. I once again supply you Exhibit I, the list of topics.

Thank you,



Carl J. Hartmann III

EXHIBIT I – List of Topics

- (a) You have not filed the passport(s) with the Court under seal.²
- (b) If you have provided Item 3, I cannot locate it.
- (c) You have stated that you have previously provided Item 1, the POA from Manal to Jamil—but would ask that you re-send it, as I have clearly misplaced it.
- (d) **Fully** describe and produce documents as to all her accounts. She has stated that she received all the cash from three interest payments of \$360k each (doled out as she needed it by Isam). This is a fantastic claim. We assume that she had and has regular banking accounts or other types of accounts into which she puts funds—whether they are in her name, her partner’s name or some other name. What we wish to see are the transactions that reflect her getting and using over \$1 million...or the absence of them.
- (e) Provide certification that she has used all reasonable steps to get both information about the accounts/funds and the account documents from Isam—as he was either her agent or her fiduciary. She should have him interviewed in detail and collect any information and recollections he has. She and Isam have described these amounts as being in a “fund” he managed for her, or in “accounts” managed by him.
- (f) We understand that neither she nor Isam paid USVI or FIRPTA taxes on VI source income. Did either pay income tax on interest income for the over \$1 million in such income in their home taxing jurisdiction(s)? If Manal and/or Isam received \$360k in 1998, did either file tax returns in STM and/or Ramallah in that year, and did either declare this as interest income? Same for 1999 and 2000. They have both been asked for both the tax filings themselves and for a response to these questions. Saying that she did not know she owed taxes here, that Isam never personally “received income”, or that Manal will pay taxes here *if she loses this case* is unresponsive as to whether anyone ever paid any taxes on this money.
- (g) as to the \$1 million dollars in alleged income since 1998. She has now said that she has spent it all. She needs to give a detailed recounting on the when, where, how and what of this—and any assets she purchased. This means that she must write out the various amounts, dates and uses for a million dollars. If she cannot recall the exact dates and amounts, she must give her best approximations. Moreover, if she never deposited a cent, she still received, held, and used these smaller payments. How was it done, what was the mechanism or mechanisms. Of

² She has stated that passports have been produced—but while it is true that Hamed has some copies of part of her prior passports attached to other documents, these are NOT full copies of her passports. All passports that she presently has should be *fully* copied including covers and endorsements, and full copies of any prior passports she has should also be fully copied. Either those should be filed with the Court as you previously agreed, or they should be provided to Hamed with a statement that no others exist. This seeks both information and estoppel. Hamed wishes to be certain that she has no passport from other jurisdictions such as Sint Maarten, France, Jordan, Israel, or other countries. He also wishes to see any stamps that would reflect when and where she has traveled. She is seeking the equivalent of at least \$30 million dollars. She must fully comply with such basic discovery at that level of seriousness.

particular interest is the fact that she returned to the West Bank. Was all \$1 million provided before she left STM? If not, how did Isam get it to her over there?

(h) The revision of responses by all three as to BFC Appliances before her deposition.