

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-4057-SAC
)	
DAVID TANNER, et al.,)	
)	
Defendants.)	

ORDER

This matter comes before the court for the consideration of sanctions to be awarded to plaintiff as a result of the court’s denial of defendant Tanner’s motion for protective order (Doc. 81). On January 26, 2005, the court entered its memorandum and order (Doc. 105) denying defendant Tanner’s motion for protective order, denying plaintiff’s request for sanctions beyond any expenses it incurred as a result of defendant Tanner’s non-appearance at an attempted deposition on August 4, 2005, and directing plaintiff to provide the court with an accounting of any such expenses related to the August 4, 2005-deposition by September 15, 2005.

On September 16, 2005, plaintiff filed a “memorandum relating to the award of costs” (Doc. 116), in which it reports that defendant Tanner has agreed to the disgorgement of the full amount of funds alleged by plaintiff to have been at issue with regard to him in this matter and requests that it be allowed to waive the award of costs associated with defendant Tanner’s non-appearance on August 4, 2005. The plaintiff further reports, and the court notes in the record,

that an agreed order relating to the award of disgorgement was entered in the case on September 13, 2005 (Doc. 113). Moreover, plaintiff states that its counsel conferred with counsel for defendant Tanner and that he does not oppose the waiver of costs.

In light of these parties' apparent agreement on both the costs issue, and the underlying substantive issues in the litigation, the court finds that plaintiff should be allowed to waive the award of costs associated with defendant Tanner's non-appearance at the August 4, 2005-deposition. Accordingly, no monetary sanctions will be imposed upon defendant Tanner at this time.

IT IS SO ORDERED.

Dated this 20th day of September, 2005, at Topeka, Kansas.

s/K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge