

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

THE TRIPLE-I CORPORATION,

Plaintiff,

vs.

HUDSON ASSOCIATES CONSULTING,
INC., ET AL.,

Defendant.

Case No. 06-2195- EFM

MEMORANDUM AND ORDER

Before the Court is the KMPPro parties' Objection to Magistrate Order (Doc. 390). For the following reasons, the Court denies the motion, and Judge Humphreys' Order is affirmed.

The KMPPro parties have moved, pursuant to Fed. R. Civ. P. 72(a) for review of Magistrate Judge Humphreys' May 1, 2009 Order (Doc. 382) granting Triple-I's request for sanctions (Doc. 302). The standard for reviewing a magistrate's order is well established.

Upon objection to a magistrate judge order on a non-dispositive matter, the district court may modify or set aside any portion of the order which it finds to be "clearly erroneous or contrary to law." The Court does not conduct a de novo review, but applies a more deferential standard which requires the moving party to show that the magistrate judge's order is clearly erroneous or contrary to law. The Court is required to affirm the magistrate judge's order unless the entire record evidence leaves it "with the definite and firm conviction that a mistake has been committed."¹

¹See *Triple-I Corp. Inc., v. Hudson Associates Consulting Inc.*, 2007 WL 2436677, *1 (D. Kan. Date 2007)(citations omitted); see also 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a).

Triple-I moved for the imposition of sanctions against the KMPRo parties for failing to comply with the Court's September 18, 2008 Order. In Triple-I's motion, it stated that it was seeking sanctions pursuant to Fed. R. Civ. P. 37(b)(2).² The KMPPro parties responded and argued that sanctions were not appropriate. In deciding the issue, Judge Humphreys thoroughly reviewed the issues and determined that sanctions were warranted for the KMPPro parties' failure to comply with the September 18, 2008 Order. Noting that the KMPPro parties failed to comply with the Order and that the KMPPro parties continued to provide responses to discovery that Judge O'Hara had previously rejected, Judge Humphreys ordered monetary sanctions against Ms. Smiley personally because she found that the evasive responses were the result of counsel's tactical decisions. Judge Humphreys further stated that "the court will not entertain or countenance supplemental argument on whether sanctions are warranted."

The KMPPro parties argue that the sanctions are inappropriate because counsel had no notice that the Magistrate Judge would award sanctions against the individual attorney representing them, or counsel in general. KMPPro also argues that a sanction award is not appropriate without sufficient opportunity to be heard. Pursuant to Fed. R. Civ. P. 37(b)(2)(c), the court must impose sanctions on "the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Here, the motion for sanctions was specifically brought pursuant to this rule. Therefore, the KMPPro parties were aware that sanctions could be imposed on either counsel or the party. Judge Humphreys determined that sanctions were appropriate due to the KMPPro parties' failure to comply with a previous Order from the Court.

²Doc. 328.

