

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

JOSEPH L REED,

Plaintiff,

v.

BRONSON & MIGLIACCIO LLP,

Defendant.

CIVIL ACTION

No.: 07-2363-JWL-GLR

ORDER

This matter comes before the Court on Plaintiff's Motion to Compel Deposition and for Sanctions (doc. 15). Plaintiff requests an order to compel Defendant to produce its designated corporate representative(s) for deposition at the offices of his counsel in Leawood, Kansas. He also seeks an extension of the discovery deadline for the sole purpose of conducting this deposition. Plaintiff finally asks the Court to sanction Defendant in the amount of \$3,825.15 for costs and fees incurred by his counsel in traveling to Buffalo, New York, to attend the deposition, which had been set for February 25, 2008.

On February 4, 2008, Plaintiff served his Notice of Deposition of Defendant's designated representative pursuant to Fed. R. Civ. P. 30(b)(6) (doc. 14). It set the deposition for February 25, 2008, in Buffalo, New York. Defendant admits it was served with the notice. But, through no intentional act, the notice was lost through transmission to the client. Defendant states it has never refused to produce a deponent and stands ready to produce its corporate designee in Kansas at a time mutually agreeable to Plaintiff in March or early April 2008. The Court will, therefore, sustain the motion to compel Defendant to produce its corporate designee for deposition at the offices of Plaintiff's counsel in Leawood, Kansas, at a mutually agreed time in March or early April 2008.

The discovery deadline for the purpose of completing such deposition will be accordingly extended to **April 15, 2008**.

Plaintiff also asks the Court to sanction Defendant in the amount of \$3,825.15 for the following expense:

- \$100.00 Deposition cancellation fee (court reporter)
- 797.00 Airfare
- 69.00 Taxis
- 24.00 Airport parking
- 135.15 Lodging
- 1,300.00 Deposition preparation and attendance (6.5 hours @ \$200 per hour)
- 1,400.00 Attorney travel time (14 hours @ \$100 per hour)

Federal Rule of Civil Procedure 37(d)(1)(A)(i) permits the Court, on motion, to order sanctions if “a party or a party’s officer, director, or managing agent - - - or person designated under Rule 30(b)(6) or 31(a)(4) - - - fails , after being served with proper notice, to appear for that person’s deposition.” Sanctions for failing to appear for deposition may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). “Instead of or in addition to these sanctions, the court must require the party failing to act, 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.”¹

The Court finds that Defendant should be sanctioned for its admitted failure to produce its Rule 30(b)(6) representative for deposition on February 25, 2008 in Buffalo, New York. Sanctions

¹Fed. R. Civ. P. 37(d)(3).

shall include the expenses and one-half the time of counsel for Plaintiff, but not time for preparation for the deposition. Defendant does not dispute that Plaintiff had made “repeated” requests for a date for the deposition. Nor does Defendant dispute that it had adequate notice of the deposition. Apparently defense counsel simply failed to continue to communicate adequately with its client and with counsel for Plaintiff. Counsel for Plaintiff should have followed up with additional communication with defense counsel, but the primary responsibility for the failure appears to rest with Defendant, as the response concedes. **Within thirty (30) days of the date of this Order,** Defendant and its counsel shall pay to Plaintiff and his attorney the sum of **\$1,825.15** as sanctions for failing to produce its corporate designee for deposition on February 25, 2008. Defendant shall file with the Court a receipt or affidavit to show that such payment has been made.

IT IS THEREFORE ORDERED THAT Plaintiff’s Motion to Compel Deposition and for Sanctions (doc. 15) is sustained in part and overruled in part, as set forth herein.

Dated in Kansas City, Kansas, this 11th day of March, 2008.

s/ Gerald L. Rushfelt

Gerald L. Rushfelt
United States Magistrate Judge