UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Willie Adams, Jr., Debtor.	C/A No. 04-11179-W Adv. No. 04-80339-W **JUDGMENT** Chapter 13
Elite Financial Services, Inc. Plaintiff, v. Willie Adams, Jr. Defendant.	

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Scott L. Hood, Esq. shall pay John Devore Compton, III, Esq. $1,000.00 within ten (10) days from entry of the attached Order. Furthermore, within seven (7) days from entry of the attached Order, Elite Financial Services, Inc. shall provide answers, responses, and other disclosures as required by the attached Order.

John E Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
February 23, 2005

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 04-11179-W
Willie Adams, Jr., Debtor.	Adv. No. 04-80339-W
Elite Financial Services, Inc. Plaintiff,	**ORDER**
v.	Chapter 13
Willie Adams, Jr. Defendant.	

This matter comes before the Court upon a Motion to Compel Discovery ("Motion to Compel") filed by Willie Adams, Jr. ("Defendant"). In the Motion to Compel, Defendant asserted that Elite Financial Services, Inc. ("Plaintiff") failed to provide complete answers and responses to Defendant's discovery requests in a timely fashion. Additionally, Defendant requested an extension of time for discovery and an award of all reasonable fees and costs incurred in prosecuting the Motion to Compel. After granting the Motion to Compel in regards to Plaintiff's insufficient responses, the Court held a hearing to address Defendant's demand for attorney's fees and request for an extension of time for discovery.[1] After considering the parties' arguments, their pleadings, and the attendant circumstances of this case, the Court makes the following findings of fact and conclusions of law.[2]

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[1] The Court shall provide an extension of time for discovery by a separate order.

[2] To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

FINDINGS OF FACT

1. In July 2004, Plaintiffs instituted a foreclosure action against Defendant in the Circuit Court for Laurens County, South Carolina.

2. In response to Plaintiff's complaint, Defendant filed an answer, on September 9, 2004, and asserted various defenses and counterclaims against Plaintiff. One of the counterclaims alleged that Plaintiff had failed to comply with the Home Ownership and Equity Protection Act of 1994 (hereinafter referred to as "HOEPA"), and another alleged that Plaintiff failed to comply with the Truth-in-Lending Act and Regulation Z (hereinafter referred to as "TILA"). Other counterclaims alleged violations of the following: (1) South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-20), (2) Unauthorized Practice of Law, (3) Unauthorized Mortgage Broker (S.C. Code Ann. § 40-58-20), Unconscionability (S.C. Code Ann. § 37-5-108(1)), and Attorney Preference (S.C. Code Ann. § 37-10-102).

3. On September 21, 2004, Defendant filed a voluntary petition for chapter 13 bankruptcy relief.

4. On October 20, 2004, Defendant removed his counterclaims and Plaintiff's pending mortgage foreclosure action from the Circuit Court for Laurens County, South Carolina to the United States Bankruptcy Court for the District of South Carolina.

5. As a result of a Federal Rule of Civil Procedure 16 status conference, on November 10, 2004, this Court issued an Order (the "Scheduling Order") that set a period of time for discovery and scheduled a pretrial hearing.

6. On November 30, 2004, Defendant through its counsel, John Devore Compton, III, Esq. ("Compton"), served Plaintiff with interrogatories and requests for production.

Pursuant to FED. R. CIV. P. 33 and 34,[3] answers to the interrogatories and responses to requests for production were due within 30 days of Defendant's service of the discovery requests.

7. The record of this case indicates that Plaintiff did not submit a response to Defendant's discovery requests within the time prescribed by the Federal Rules.

8. On January 4, 2005, Compton sent a letter to Plaintiff's counsel, Scott L. Hood, Esq. ("Hood"). In the letter, Compton advised Hood that he had not received any response to the interrogatories and requests for production served on Plaintiff, and that if Plaintiff did not respond by January 5, 2005, Compton would file a Motion to Compel and seek an award of fees and costs.

9. On January 5, 2005, Plaintiff responded to Defendant's discovery requests.

10. On January 10, 2005, Compton e-mailed a second letter to Hood. In the second letter, Compton contended that Plaintiff's responses to interrogatories numbers 4, 9, 10, 13, 14, 15, and 17 were non-responsive. Compton also stated that he believed Plaintiff's responses to requests for production numbers 6, 7, 8, 9 and 10 were also non-responsive. Again, Compton advised Hood that if Plaintiff did not provide adequate responses to the discovery requests noted, Compton would file a Motion to Compel and seek an award of fees and costs.

11. On January 12, 2005, Compton sent Hood a third letter in which he requested Hood to respond to the second letter.[4]

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[3] Discovery rules provided by Federal Rules of Civil Procedure 26, 33, 34, and 37 and cited herein have been made applicable to this adversary proceeding by Federal Rules of Bankruptcy Procedure 7026, 7033, 7034, and 7037. Therefore, for ease of reference, the Court shall generally cite to and reference the applicable FED. R. CIV. P. only.

[4] Apparently, Compton sent the letter dated January 12, 2005 in the event that Hood did not regularly check his e-mail; thus, providing Hood with another opportunity to respond.

12. Compton also made telephone calls and other attempts to communicate with Hood on the issue of discovery.

13. There is no evidence indicating that Hood responded to any of Compton's requests or that Hood responded to telephone calls and other communication attempts that Compton made in order to confer on discovery matters.

14. On January 13, 2005, Compton filed Defendant's Motion to Compel.

15. On January 18, 2005, the Court granted the Motion to Compel, ex parte, and required Hood to provide sufficient responses immediately.

16. There is no evidence indicating that Hood supplemented Plaintiff's discovery responses in an expeditious manner, as required by the Order granting the Motion to Compel, or within the 10 days provided by Local Bankruptcy Rule 7026-1(f).[5]

CONCLUSIONS OF LAW

In order to determine whether Plaintiff's responses to the discovery requests made by Defendant warrants an award of fees and costs, an examination of the specific interrogatories and requests for production that Defendant noted in the January 10, 2005 letter and Plaintiff's corresponding responses is necessary. As a part of this inquiry, this Court must also determine the reasonable scope of discovery for this particular case, and "to adjust the timing of discovery and apportion costs and burdens in a way that is fair and reasonable." Marens v. Carrabba's Italian Grill, Inc., 196 F.R.D. 35, 37-38 (D. Md. 2000)(citing Fed. R. Civ. P. 26(b)(2) and cases).

[5] Local Bankruptcy Rule 7026-1(f) provides that unless otherwise ordered by the Court, after the Court rules on a discovery motion, any answer; production; designation; inspection or examination required by the Court shall be completed within 10 days after entry of the Court's order.

1. Failure to Answer the Interrogatories under Oath

FED. R. CIV. P. 33(b)(1) requires interrogatories to be answered "separately and fully in writing under oath . . . ." In this case, Hood answered Defendant's interrogatories on behalf of Plaintiff, a corporate entity. Hood appears authorized to answer the interrogatories on behalf of Plaintiff. FED. R. CIV. P. 33(a). See also Wilson v. Volkswagen of America, 561 F.2d 494, 508 (4th Cir. 1978), cert. denied, 434 U.S. 1020 (1979)(noting that the language of FED. R. CIV. P. 33 has been construed to authorize a corporate entity's answers to interrogatories by an attorney). However, Hood did not indicate that he answered the interrogatories under oath or that some other agent of Plaintiff did so. Plaintiff's failure to provide answers to interrogatories under oath constitutes a failure to answer pursuant to FED. R. CIV. P. 37(a)(3), and gives rise to an award of fees and costs to Compton under FED. R. CIV. P. 37(b) & (d). Therefore, within 7 days from entry of this order, Hood shall resubmit Plaintiff's answers to Defendant's interrogatories with an accompanying oath.

2. Answers to Interrogatories

Interrogatory No. 4

Interrogatory No. 4 requires Plaintiff to "[e]xplain fully Plaintiff's denial of any and all allegations of [Defendant's] Answer and Counterclaim." In response, Plaintiff asserted that "contrary to the allegations alleged in [Defendant's] Answer and Counterclaims, [Plaintiff] has fully complied with all state and federal laws with regards to the transaction in question, [and that] [Defendant] entered into the transaction voluntarily and was provided with copies of all documents he was entitled to receive as

an obligor under the pertinent loan documents." Considering the wording of Interrogatory No. 4, Plaintiff's response appears sufficient.

Interrogatory No. 9

Interrogatory No. 9 requires Plaintiff to "[f]urnish a detailed factual basis for each defense you have asserted in your responsive pleading." Furthermore, "[i]f a contract, writing or document forms the basis of any claim against you and/or the basis for any defense asserted, quote or attach the relevant portions, state your construction thereof and your position with regard thereto." In response, Plaintiff simply referred to its response to Interrogatory No. 4. Plaintiff's response is insufficient. Through Interrogatory No. 9, Defendant asks for a detailed factual basis for Plaintiff's defenses. A reasonable response would have provided a detailed description of the facts on which Plaintiff relies in its defense. Furthermore, to the extent Interrogatory No. 9 seeks disclosure of "writings or documents" that form the basis of Plaintiff's claims or defenses, Plaintiff's response to Interrogatory No. 9 is deficient because Plaintiff did not produce or further identify any "writings or documents," despite reference to such in its response to Interrogatory No. 4.[6]

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[6] Furthermore, Plaintiff also has a duty to disclose such documents, or provide their "description by category and location" pursuant to FED. R. CIV. P. 26(a)(1)(B), but has failed to do so in its answer.

> FED. R. CIV. P. 26(a)(1)(B) provides, in relevant part:
>
> a party must, without awaiting a discovery request, provide to other parties:
>
> * * * *
>
> (B) a copy of, or description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.
>
> * * * *
>
> These disclosures must be made within 14 days after the Rule 26(f) conference unless a different time is set by stipulation or court order....

Such a deficiency constitutes a failure to answer under FED. R. CIV. P. 37(a)(3), and gives rise to an award of fees and costs to Compton pursuant to FED. R. CIV. P. 37(b) & (d).

Therefore, within 7 days from entry of this order, Plaintiff shall supplement its response to Interrogatory No. 9 by providing a detailed description of the facts it shall assert in defense of Defendant's counterclaims and shall disclose a list of the documents that it intends to use to support its claims and defenses in this adversary proceeding. If Plaintiff and its counsel believe that such documents have already been produced to Defendant, Plaintiff shall list the documents and indicate that they have already been produced to Defendant.

Interrogatory No. 10

In Interrogatory No. 10, Defendant asks Plaintiff to "specifically describe by name and pinpoint citation . . . case decisions, statutes, ordinances, acts, codes, regulations and legal principles, standards, and customs or usages, which you contend are especially applicable to this action." Defendant also asks Plaintiff to "[s]tate why the law applies to each claim or defense and how it applies to the facts of this case." In response, Plaintiff stated that "[t]he pertinent statutes and law applicable to this case are identified in the Defendant's answer and counterclaims, as well as a [letter from the Compton Law Firm to Plaintiff dated November 4, 2003]." To the extent that Defendant's answer, counterclaims, and the letter dated November 4, 2003, cite to specific code provisions and regulations, Plaintiff's answer to Interrogatory No. 10 is sufficient. However, Defendant's request that Plaintiff "[s]tate why the law applies to each claim or defense and how it applies to the facts of this case" is objectionable because it appears to seek disclosure of Plaintiff's counsel's mental impressions with respect to the legal

development of Plaintiff's claims and the defenses to Defendant's counterclaims. See Marens v. Carrabba's Italian Grill, Inc., 196 F.R.D. at 42 n.3 (noting that the "work product" doctrine is intended to protect against disclosure of an attorney's pure mental impressions or legal theory). In light of Plaintiff's response and the objectionable portion of Interrogatory No. 10, the Court concludes that Plaintiff has provided a sufficient response; and thus, Plaintiff shall not be required to supplement its response to Interrogatory No. 10.

Interrogatory No. 13

Interrogatory No. 13 asks Plaintiff to identify each person who advised Plaintiff on issues concerning compliance with TILA and HOEPA. In response, Plaintiff objected to Interrogatory No. 13 by contending that it violated "attorney-client privilege and/or all other rules of confidentiality." Defendant's objection is deficient because the interrogatory does not require disclosure of any privileged or confidential communications between Plaintiff and an attorney. An appropriate response simply requires a "yes" or "no" answer and disclosure of the party that provided Plaintiff with compliance advice, not disclosure of the advice provided. Plaintiff's answer to Interrogatory No. 13 constitutes a failure to answer under to FED. R. CIV. P. 37(a)(3) and gives rise to an award of fees and costs to Compton under FED. R. CIV. P. 37(b) & (d). Plaintiff shall respond to Interrogatory No. 13 according to the provisions of this Order within 7 days from its entry.

Interrogatory No. 14

Interrogatory No. 14 asks Plaintiff to set forth each and every TILA and/or HOEPA rescission action asserted against Plaintiff or its successors or assigns for the 10

years preceding the submission of responses to Defendant's discovery requests. In response, Plaintiff objected to Interrogatory No. 14 because it is "overly burdensome and irrelevant." Although Plaintiff objected to Interrogatory No. 14, Plaintiff also stated that "this information will be provided to [Defendant] after [Plaintiff] has completed reviewing its records."

Plaintiff has not clearly described how Interrogatory No. 14 is overly burdensome. Furthermore, Rule 26 provides that "[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." Relevancy under Rule 26 is broad and "should be construed liberally and with common sense rather than in terms of narrow legalism," Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2008 (2d ed. 1994) [hereinafter Wright & Miller]. See also White v. Kenneth Warren & Son, Ltd., 203 F.R.D. 364, 366 (N.D. Ill. 2001)("Liberal discovery is permitted in federal courts to encourage full disclosure before trial."). Thus, to the extent Defendant seeks information concerning Plaintiff's handling of TILA and/or HOEPA rescission, Interrogatory No. 14 requests discovery of relevant information because it relates to information concerning Defendant's claim that Elite's business practices violated TILA and HOEPA. See id. ("For the purpose of discovery, relevancy will be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case. Relevancy for discovery is flexible and has a broader meaning than admissibility at trial.")(internal quotations and citations omitted).

Plaintiff's objection to Interrogatory No. 14 is overruled; and thus, Plaintiff's answer to Interrogatory No. 14 is a failure to answer under FED. R. CIV. P. 37(a)(3), and

gives rise to an award of fees and costs to Compton under FED. R. CIV. P. 37(b) & (d). Plaintiff shall respond to Interrogatory No. 14 within 7 days from entry of this order. However, if Plaintiff does not possess records for the past ten years, Plaintiff may notify the Court so that the Court may narrow the time period for the discovery at issue. If Plaintiff does not possess such records, then it shall so state.

Interrogatory No. 15

In Interrogatory No. 15, Defendant asks Plaintiff to "[f]ully describe Plaintiff's procedure for handling a TILA and/or HOEPA rescission notice." Plaintiff's response states that Plaintiff "takes seriously any allegation which may be made that any state or federal laws governing mortgage loan transactions have not been complied with." With respect to describing Plaintiff's procedures for handling a TILA or HOEPA rescission notice, Plaintiff simply states that "[o]nce the assertion is made, [Plaintiff] would immediately commence an investigation." At a minimum, a sufficient response to Interrogatory No. 15 required some description of Plaintiff's investigative procedures. Therefore, Plaintiff's response constitutes a failure to answer under FED. R. CIV. P. 37(a)(3), and gives rise to an award of fees and costs under FED. R. CIV. P. 37(b) & (d). Within 7 days from entry of this order, Plaintiff shall provide a detailed response describing the steps involved in its investigation of TILA or HOEPA rescissions matters.

Interrogatory No. 17

Interrogatory No. 17 requires Plaintiff to "disclose the total amount of dollars that has been paid to Plaintiff in the instant transaction" by identifying each payment individually by date. Plaintiff responded by stating that it "is currently reviewing its records and will provide the requested information shortly." There is no evidence

indicating that Plaintiff provided Defendant with the information requested within the 30 days allowed for a response or following entry of the Order granting Defendant's Motion to Compel. Interrogatory No. 17 simply asks for an accounting of the money received from Defendant. Since FED. R. CIV. P. 33(b)(3) provides a party served with interrogatories with 30 days to respond, Plaintiff has been afforded ample time to provide a sufficient answer to Interrogatory No. 17. Plaintiff's failure to provide such information constitutes a failure to adequately respond to Defendant's Interrogatory No. 17 and gives rise to an award of fees and costs to Defendant's counsel under FED. R. CIV. P. 37(b) & (d). *Furthermore, within 7 days from entry of this order, Plaintiff shall* provide a detailed report disclosing (1) an accounting of Defendant's payments, (2) an accounting of any other payments associated with the loan at issue, and (3) the respective dates the payments were received.

3. Responses to Requests for Production

Request for Production No. 6

Request for Production No. 6 requires Plaintiff to provide Defendant with "[a]ll operating manuals, memorandum, or other documents concerning internal procedures of [Plaintiff]." Plaintiff objected by stating that Request for Production No. 6 is "vague, ambiguous, overly burdensome, and irrelevant to the issues involved in this matter." In light of its overly broad reach, Request for Production No. 6 appears objectionable. By simply requesting all operating manuals, memorandum, or other documents concerning Plaintiff's internal procedures without limiting the scope of discovery, Defendant appears to be seeking overly broad discovery that may include items that are irrelevant. For instance, operating manuals that deal with human resource issues concerning Equal

Employment Opportunity compliance would be irrelevant to this adversary proceeding. In light of the overbroad reach of Request No. 6, Plaintiff's objection is sustained. Accordingly, Plaintiff shall not be required to respond to Request for Production No. 6.

Request for Production Nos. 7, 8, and 10

Although phrased differently, Interrogatory No. 15 and Request for Production Nos. 7, 8, and 10 are, for the most part, duplicate requests because each essentially seeks disclosure of training manuals, compliance manuals and any other documents related to Plaintiff's handling of TILA and HOEPA issues and compliance with any federal and state consumer protection statutes. Plaintiff objected to Request for Production Nos. 7, 8, and 10 by asserting that such requests were vague, ambiguous, overly burdensome, and irrelevant. However, Plaintiff did not describe in detail how Request for Production Nos. 7, 8, and 10 were vague, ambiguous, overly burdensome, or irrelevant. Local Bankruptcy Rule 7026-1(b) requires discovery objections to be specific and the reason for the objection stated. In this instance, Plaintiff's objections simply provide conclusory statements that lack particularized facts and supporting reasons. Furthermore, the discovery sought by Defendant through Request for Production Nos. 7, 8, and 10 appears relevant because each seeks information concerning Defendant's allegations that Plaintiff failed to institute procedures and business practices that comport with TILA, HOEPA and the other federal and state consumer protection statutes cited in Defendant's counterclaims. Therefore, Plaintiff's objections to Request for Production Nos. 7, 8, and 10 are deficient and shall be overruled.

To the extent Plaintiff's counsel found Request for Production Nos. 7, 8, and 10 vague and ambiguous, the Court notes that a simple discovery conference with Compton,

as contemplated by FED. R. CIV. P. 26(f), would have provided Hood with an opportunity to clarify and narrow the type of information requested. Moreover, Compton made several attempts to contact Hood to discuss discovery issues, but Hood did not respond. However, since Request for Production Nos. 7, 8, and 10 are duplicative to some extent, the Court finds it necessary to exercise its discretion and narrow discovery in this instance. Accordingly, within 7 days from entry of this order, Plaintiff shall provide Defendant with any manuals or materials that deal with (1) TILA or HOEPA compliance or training and (2) compliance with the other federal and state consumer protection laws cited in Defendant's counterclaims. If such documents do not exist, then Plaintiff shall clearly so state.

Request for Production No. 9

Defendant requests production of all documents prepared in connection with Plaintiff's attempt to assure compliance with TILA and HOEPA during the issuance of the note and mortgage that Plaintiff issued to Defendant. Plaintiff objected to the discovery by asserting that Request for Production No. 9 is "poorly worded, vague, ambiguous, overly burdensome, and irrelevant to the issues involved in this matter." Again, Plaintiff's objection does not specify the factual circumstances or reasons for the objection. Accordingly, Plaintiff's objection is overruled.

Request No. 9 appears to be asking for production of all compliance documents produced during the processing of Plaintiff's transaction with Defendant. Therefore, within 7 days from entry of this order, Plaintiff shall provide all TILA and HOEPA compliance documents and required disclosures generated during Plaintiff's transaction with Defendant. If such documents do not exist, then Plaintiff shall clearly so state.

4. Award of Fees and Costs Associated with Prosecuting the Motion to Compel

In this case, Compton is entitled to an award of fees and costs because Hood, has failed to answer Defendant's interrogatories; respond to Defendant's requests for production; make a good faith effort to further discovery; and comply with the Order granting the Motion to Compel, in a timely and sufficient manner. Although some of Defendant's discovery was objectionable, Hood's objections were largely conclusory because he repeatedly failed to support the objections by citing particularized facts and reasons. Furthermore, Hood's objections indicate that he did not properly recognize that relevancy, at the discovery phase of pre-trial litigation, is defined broadly. See FED. R. CIV. P. 26(b)("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . ."). Accordingly, most of Plaintiff's objections, which assert that certain requests for production or interrogatories are irrelevant, are without merit and have been overruled.[7]

The Court also finds that Hood's non-responsiveness is contrary to the purpose and ideals of the Federal Rules regulating discovery. If anything, the method by which Hood has handled Defendant's discovery requests and his repeated failure to respond to correspondence and communications from Compton indicates an unwillingness to cooperate with opposing counsel during the discovery phase. Such behavior does not comply with Local Bankruptcy Rule 7026-1(h) and paragraph number 2 of this Court's Scheduling Order, both of which encourage counsel to participate in pretrial discovery

[7] Furthermore, FED. R. CIV. P. 37(d) provides that the failure of a party to answer interrogatories or respond to requests for inspection "may not be excused on the ground that discovery sought is objectionable unless the party failing to act has a pending motion for protective order as provided by Rule 26(c)."

conferences in order to decrease, in every way possible, the filing of unnecessary discovery motions.

In this case, it is apparent that a discovery conference between Compton and Hood, as required by Rule 26(f),[8] would have narrowed discovery so that it might be less burdensome on Plaintiff and clarified that which Hood found vague. Furthermore, had Hood in good faith conferred or attempted to confer with Compton, Hood could have filed a Motion for a Protective Order pursuant to Rule 26(c) in order to have the Court limit Defendant's discovery requests. See FED. R. CIV. P. 26(c) ("Upon motion by a party or by the person from whom discovery is sought, *accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties* in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense").

At the very least, Hood should have amended and supplemented the answers and responses to Defendant's discovery immediately, as required by the Order granting the Motion to Compel, and certainly within 10 days from entry of the Order as provided by Local Bankruptcy Rule 7026-1(f). However, Hood failed to do so.[9] Therefore, the Court

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[8] The Court also notes that a failure to confer "in good faith in the development and submission of a discovery plan" authorizes the Court to award reasonable fees and expenses for such conduct under FED. R. CIV. P. 37(g). Therefore, Hood's failure to confer or attempt to confer with Compton on discovery matters in a good faith attempt to resolve this discovery dispute through the creation of a discovery plan is further grounds for awarding of fees and expenses to Compton pursuant to FED. R. CIV. P. 37.

[9] The Court also notes that this not the first time Hood has not been diligent in responding to discovery requests. During the adversary proceeding of McDow v. Rothschild, the Court entered an order admonishing Hood for failure to comply with the United States Trustee's discovery. See McDow v. Rothschild, C/A No. 03-11346-W, Adv. Pro. No. 03-80563, slip op. (Bankr. D.S.C. Mar. 29, 2004). In that

concludes that an assessment of fees and costs pursuant to FED. R. CIV. P. 37(b) & (d) is proper. Compton submitted an affidavit of fees and expenses which indicated that the total amount of fees and costs incurred in prosecuting the Motion to Compel was $2,189.23. However, $750.00 of the fee appears associated with answering Plaintiff's interrogatories, and would not be a reasonable expense incurred during the prosecution of the Motion to Compel because that fee would have been incurred by Defendant whether or not the Motion to Compel was filed. Therefore, the total amount of reasonable fees and expenses that the Court will consider in this matter is $1,439.23. In light of the circumstances of this case and the fact that, although some of Plaintiff's objections may have some merit, a large majority were improper, the Court concludes that Compton is entitled to an award of $1000.00 for fees and expenses incurred in prosecuting the Motion to Compel.

CONCLUSION

It is therefore,

ORDERED that Hood shall pay Compton $1,000.00 in fees and costs associated with pursuing the Motion to Compel within 10 days from entry of this Order;[10] and it is further

ORDERED that Plaintiff shall provide responses and other disclosures as provided herein within seven (7) days from entry of this Order.

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case, the United States Trustee ("UST") filed a motion to compel that the Court granted; however, the UST did not seek reimbursement of costs and expenses.

[10] To the extent that Elite Financial Services, Inc. may be the party responsible for obstructing Defendant's discovery by failing to assist Hood's efforts to respond, the Court reserves the right to assess sanctions against Elite Financial Services, Inc. upon proper motion.

John E Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
February 23, 2005