

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

In Re Charge of Shahrokh Daghighian

United States of America, Complainant v. San Diego Semiconductors, Inc., a California Corporation, Respondent; 8 U.S.C. 1324b Proceeding; Case No. 89200442.

ORDER DENYING MOTION TO COMPEL DISCOVERY

On June 4, 1990, Complainant, through Kirk Flagg, Esquire, filed a Motion to Compel Discovery, along with an accompanying declaration and memorandum, seeking more complete answers to interrogatories and requesting sanctions for alleged willful falsification of Respondent's answers to interrogatories. Complainant also moved for default judgment and for costs associated with bringing the Motion. Alternatively, Complainant requested an Order preventing Respondent from presenting evidence relative to Shahrokh Daghighian's qualifications, and requiring Respondent to pay for depositions of individuals listed in Respondent's answers to interrogatories.

On June 7, 1990, I issued an Order of Inquiry, inviting Respondent to respond to this Motion prior to my ruling, by June 15, 1990. Respondent requested additional time to respond to the Motion on June 13, 1990. In my Order of June 14, 1990, I granted Respondent's request, enlarging the time for filing a response to June 25, 1990. On June 28, 1990, having not received a response, I learned from Ivor F. Thomas, Esquire, that he had assisted Respondent in preparing a response, and that he had personally mailed it to me on June 22, 1990. A duplicate copy of Respondent's response was hand-delivered to me on the same date.

Respondent submitted a motion in opposition to the Motion to Compel Discovery, with an accompanying memorandum and declaration in support thereof. Respondent alleges that the Complainant's motion is without validity and requests that it be denied and

``that Complainant be assessed costs and sanctions for bringing this frivolous motion.''

Complainant's motion sets forth Respondent's responses to certain interrogatories, and then claims that these responses are willfully false. I cannot rely on these bold assertions and a declaration of Complainant's counsel alone in ruling on this Motion. I have not been provided with any depositions or affidavits from neutral witnesses which support Complainant's allegations. I simply do not have sufficient information to determine whether anything was misstated, let alone whether it was done willfully. Complainant has not persuaded me to rule in its favor. I furthermore feel that it would be improper to rule in Complainant's favor when Complainant's presentation is not specific enough to make the ruling requested.

Similarly, Complainant has not demonstrated that Respondent's responses caused unnecessary depositions to be taken. I have been provided with small portions of unauthenticated depositions which have failed to support Complainant's allegations of willful falsification of responses. Complainant's argument that the Respondent is responsible for the costs of depositions is not persuasive. This ruling, however, does not preclude Complainant from producing witnesses or other evidence at the time of hearing, that Respondent's responses to interrogatories were not proper, or were willfully falsified. I cannot make that determination at this time, but I am keeping an open mind and will conform my opinions to the evidence received by me.

Respondent counters with what appears to be a compelling argument, in that it responded to the interrogatories pertaining to Mr. Daghighian's qualifications from a standpoint of all responsibilities of Mr. Daghighian, including his work ethic and integrity, and not just the technical elements of his employee qualifications. Respondent, at least at this juncture, has disclosed what its responses were and why they were made. For the purposes of discovery, Respondent has answered the interrogatories propounded. I do not feel it is necessary to compel additional or more complete responses at this late date. Complainant has undertaken discovery and has taken necessary depositions. Further interrogatories are, in my view, unnecessary.

I will not prevent Respondent from presenting evidence relative to Mr. Daghighian's qualifications as Complainant requests. The issue of Mr. Daghighian's qualifications and work performance are central to this matter. I see no justification to preclude information which will be necessary for a just resolution of this case.

Accordingly, it is my ruling:

1. That Complainant's Motion to Compel Discovery is denied.
2. That Complainant's request for attorney's fees, sanctions, costs associated with taking depositions, and default judgment is denied.
3. That Respondent's request for attorney's fees and sanctions is denied.
4. That Complainant's request to prevent Respondent from introducing evidence related to Mr. Daghighian's qualifications is denied.
5. That, preliminarily, it appears the interrogatories propounded by Complainant may not have been tailored specifically enough to show Respondent what was meant by ``qualifications' for employment.
6. That Respondent made a good faith effort at responding to the interrogatories.
7. That the Court recognizes that pre-hearing statements and/or briefs are due no later than July 6, 1990, and for the sake of keeping the record manageable, the Court will not entertain additional motions after July 6, 1990, unless on an emergency basis, accompanied by an affidavit.
8. That the Court will expect the parties to be ready for the hearing on Tuesday, July 17, 1990, in San Diego, California.
9. That all stipulations and subpoenas should be forwarded to the Court as soon as possible.
10. That more specific information regarding the place and time of hearing will be mailed under separate cover.

IT IS SO ORDERED: This 29th day of June 1990, at San Diego, California.

E. MILTON FROSBURG
Administrative Law Judge