

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

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. §1324a PROCEEDING
) OCAHO CASE No. 90100326
)
NOEL PLASTERING &)
STUCCO, INC.)
Respondent.)
_____)

ORDER GRANTING COMPLAINANT'S
MOTION TO COMPEL DISCOVERY

On March 20, 1991, Complainant filed a Motion To Compel Discovery pursuant to 28 C.F.R. §68.21(a) of the Rules of Practice and Procedure ("Rules").

On November 20, 1990, Complainant served upon Respondent its First Set of Interrogatories and Request for Production of Documents. In paragraph 17 of this discovery request, Complainant requires Respondent to produce its federal and state income tax returns for the past three years. In paragraph 20, Complainant required Respondent to identify individuals who have assisted in the preparation of the response to the interrogatories; it also required Respondent to specify the manner in which such individuals may have assisted in preparing a particular answer.

On January 23, 1991, Respondent served its Answer to the above discovery request. However, Respondent's did not provide any answers to paragraphs 17 and 20 of that request. Respondent objected to paragraph 17 on the ground that the request for tax returns constituted an invasion of privacy and that such returns are beyond the scope of discovery. Respondent further objected to paragraph 20 of the request on the ground that it will not lead to discoverable information.

Respondent's objection to paragraph 17 of the discovery request is without basis. Under federal discovery rules, tax returns are not privileged documents, even though courts generally balance the liberal discovery policy against the policy of maintaining the confidentiality of such financial documents. See Lemanik, S.A. v. McKinley Allsopp, Inc., 125 F.R.D. 602 (1989). In the present case, Respondent's tax returns for the last three years are clearly relevant in regard to the issue of the appropriate fine. Furthermore, due to the fact that Respondent prepared such documents under penalties of perjury, they are the most reliable source of information pertaining to Respondent's financial condition during the relevant period. Hence, such considerations outweigh the confidentiality policy generally accorded by federal courts to tax returns.

Respondent's objection to paragraph 20 of Complainant's discovery request is also without basis. 28 C.F.R. §68.16(b) of the Rules specifically allows parties to discover the identity and location of persons having knowledge of any discoverable matter. Paragraph 20 of the current discovery request is clearly calculated by Complainant to identify individuals who may have knowledge of any discoverable information. Therefore, this request is not objectionable.

Complainant's instant discovery request may assist the parties in their hearing preparations. Furthermore, Respondent's objections to paragraphs 17 and 20 of the request lack legal foundations. I therefore grant Complainant's Motion to Compel Discovery. Respondent has until May 10, 1991 to provide relevant answers and documents to paragraphs 17 and 20 of Complainant's First Set of Interrogatories and Request for Production of Documents.

SO ORDERED.

FREDERICK C. HERZOG
Administrative Law Judge

Dated: April 23, 1991