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March 2, 201

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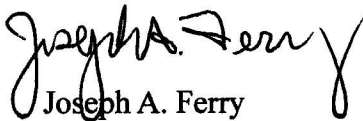
Re: InterNACHI v. Kelly, C. C. P. Bucks County, C. A. No. 08-07946-26-2

Dear Mr. Oberlies,

Please find enclosed Plaintiff's Motion to Compel Discovery Responses which was filed today in Bucks County Court of Common Pleas.

If Defendants wish to oppose this Motion, they should file their responses in the time allotted by the Pennsylvania Rules of Civil Procedure.

Sincerely yours,

  
Joseph A. Ferry

JAF/idi

cc: Mark Cohen, Esquire



IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

CIVIL DIVISION

InterNational Association of Certified :  
Home inspectors :  
 :  
Plaintiff :  
 :  
v. :  
 :  
Joe Kelly :  
 :  
and :  
 :  
Pennsylvania Home Inspectors' :  
Coalition, Inc. :  
 :  
Defendants :

CIVIL ACTION NO. 08-07946-26-2

JURY TRIAL DEMANDED

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**MOTION TO COMPEL DISCOVERY RESPONSES**

Plaintiff hereby moves for an Order imposing certain sanctions on Defendants for failing to respond to discovery requests that Plaintiff served on Defendants in October of 2009. In support of this Motion, Plaintiff states:

1. On October 21, 2009, Plaintiff served Interrogatories on Defendant Kelly and served separate Interrogatories on Defendant Pennsylvania Home Inspector's Coalition, Inc. ("PHIC"). On that same date Plaintiff also served a Request for Production of Documents on Kelly and PHIC. Plaintiff served these discovery request by mailing them to Defendants' counsel of record at his business address. Copies of Plaintiff's Interrogatories to Kelly and PHIC are attached as Exhibits A and B. Copies of Plaintiff's Request for Production of Documents to Kelly and PHIC are attached as Exhibits C and D. Exhibits A-D are referred to in this Motion as "Plaintiff's discovery requests" or as "discovery requests"

2. Defendant's counsel received the discovery requests within a few days after Plaintiff's counsel mailed them. Defendant's counsel has, in fact, admitted this.

3. Counsel for Plaintiff, Mr. Cohen and Mr. Ferry, have made repeated requests to Defendants' counsel that Defendants respond to Plaintiffs' discovery requests. In November of 2009, Defendants' counsel contacted Mr. Cohen and asked that Mr.

Cohen send the discovery requests to him in MS Word format. Mr. Cohen emailed the discovery requests to Defendant's counsel in MS Word format on November 11, 2009. Mr. Ferry emailed Defendant's counsel on December 12, 2009, to ask when Plaintiffs could expect Defendant's responses to Plaintiff's discovery requests.

4. As of February 27, 2010, Defendants have failed to respond to Plaintiff's discovery requests, despite repeated assurances by Defendants' counsel that Defendants would respond.

5. Rule 4006 requires that a party that has been served Interrogatories serve answers and objections, if any, within thirty days after service of the Interrogatories.

6. Rule 4009.12 requires that a party that has been served a Request for Production of Documents respond within thirty days after service of the Request for Production.

7. Rule 4019(c) provides that when a party fails to answer Interrogatories or fails to respond to a Request for Production, the Court may, upon motion, make

(1) an order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition;


(3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or entering a judgment of non pros or by default against the disobedient party or party advising the disobedience;

(4) an order imposing punishment for contempt, except that a party may not be punished for contempt for a refusal to submit to a physical or mental examination under Rule 4010;

(5) such order with regard to the failure to make discovery as is just.

WHEREFORE, Plaintiff moves for an Order imposing sanctions on Defendants for failure to make discovery, including an Order deeming all of Plaintiff's allegations to be

admitted and precluding Defendants from presenting any evidence in support of their defenses, and for such other relief as the Court deems just.



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**CERTIFICATE OF SERVICE**

I certify that on March 2, 2010, I served a copy of this Motion on the Defendants by mailing a true copy to Defendants' counsel, Mr. Joseph M. Oberlies, Connor, Weber & Oberlies, 2401 Pennsylvania Avenue, Ste. 1C-47, Philadelphia, PA 19130, by first class U.S. Mail, postage prepaid.

~~Joseph A. Ferrry~~  
JOSEPH A. FERRY, ESQUIRE