

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**TRANS NATIONAL COMMUNICATIONS
INTERNATIONAL, INC.,**

Plaintiff,

v.

Case No. 8:03-CV-1722-T-30EAJ

OASIS TRAVEL GROUP, INC., et al.,

Defendants.

ORDER

Before the court is Plaintiff's **Motion for Order of Contempt** (Dkt. 58), filed January 23, 2007. Defendants have not filed a response as of the date of this order and the period for responding has elapsed; therefore, Defendants are deemed to have no objection to the relief requested. See Local Rule 3.01(b), M.D. Fla.

Following a bench trial in December 2004, the court entered final judgment jointly and severally against Defendants Oasis Travel Group, Inc., Modern Marketing Solutions, Inc., Steven Morris ("Morris"), and James Bowman in the amount of \$311,370.99 plus post-judgment interest at the applicable statutory rate (Dkts. 53, 54). In the instant motion, Plaintiff contends that Morris failed to appear at a deposition in aid of execution that was properly noticed for May 5, 2006. Plaintiff requests that the court impose sanctions against Morris for failure to appear at the deposition, including the payment of attorneys' fees and costs incurred by Plaintiff by Morris' failure to appear, holding Morris in contempt of court for failure to comply with the subpoena duces tecum, and ordering Morris to appear at a deposition scheduled for March 30, 2007 in Tampa, Florida.

Rule 69, Federal Rules of Civil Procedure, provides that in aid of execution of a judgment, the judgment creditor may obtain discovery from the judgment debtor through any of the discovery methods provided in the Federal Rules of Civil Procedure or in the state court rules of procedure. Fed. R. Civ. P. 69(a). Pursuant to these rules, a party must submit to a properly noticed deposition by the opposing party. See Fed. R. Civ. P. 30(a)(1). Failure to submit to a properly noticed deposition is sanctionable under Rule 37. See Fed. R. Civ. P. 37(d).

Plaintiff requests that the court impose a monetary sanction against Morris in the amount of \$200.00 (\$150.00 in attorneys' fees and \$50.00 in costs) for failure to appear at the May 5, 2006 deposition. The court finds that Morris' failure to appear is not substantially justified and that the fees and expenses are reasonable and were incurred due to Morris' conduct. An award of expenses is not unjust.¹ Moreover, the court cautions Morris that although he is proceeding pro se, he is still required to comply with the Federal Rules of Civil Procedure and with this court's discovery orders and may be sanctioned for failure to comply. See Moon v. Newsome, 863 F.2d 835, 837 (11th Cir.), cert. denied, 493 U.S. 863 (1989). Therefore, Morris' failure to submit to any subsequent deposition may result in further sanctions.

Morris shall appear for a deposition in aid of execution before Gravity Reporting on March 30, 2007 at 10:00 a.m., at the offices of Kass, Shuler, Solomon, Spector, Foyle & Singer P.A., 1505 N. Florida Avenue, Tampa, Florida 33601, and shall bring with him the documents pursuant to the original Subpoena Duces Tecum for Deposition on May 5, 2006. Plaintiff shall serve a copy of this

¹ Where a party fails to appear for a properly noticed deposition, Rule 37(d), Federal Rules of Civil Procedure, requires that the court grant the moving party reasonable expenses associated with the party's failure to appear, including attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(d).

order on Morris at both his address of record and the address shown on Plaintiff's proposed order of contempt (Dkt. 58 at 5).

Regarding Plaintiff's request that the court hold Morris in contempt of court, civil contempt is a mechanism designed to coerce compliance with court orders. In re Lawrence, 279 F.3d 1294, 1300 (11th Cir. 2002). Appropriate sanctions for civil contempt include: 1) coercive fines; 2) compensatory fines; 3) attorneys' fees and costs; and 4) coercive incarceration. See Citronelle-Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1304 (11th Cir. 1991). Further, "a district court may not use the civil contempt power to impose what amounts to a punitive or criminal contempt sanction." United States v. City of Miami, 195 F.3d 1292, 1298 (11th Cir. 1999). Morris will be provided a final opportunity to submit to a deposition. Should he fail to do so, a certification of facts constituting contempt could issue. See 28 U.S.C. § 636(e).


Accordingly and upon consideration, it is **ORDERED** and **ADJUDGED**:

- (1) Plaintiff's motion for order of contempt (Dkt. 58) is **GRANTED IN PART**. Morris is sanctioned under Fed. R. Civ. P. 37(d) in the amount of \$200.00 for failure to appear at the May 5, 2006 deposition. Morris shall pay this sum to Plaintiff through its attorneys of record, Kass, Shuler, Solomon, Spector, Foyle & Singer, P.A., P.O. Box 800, Tampa, Florida 33601, within thirty (30) days of the date of this order.
- (2) Morris shall appear for a deposition in aid of execution before Gravity Reporting on March 30, 2007 at 10:00 a.m., at the offices of Kass, Shuler, Solomon, Spector, Foyle & Singer P.A., 1505 N. Florida Avenue, Tampa, Florida 33601, and shall bring with him the documents pursuant to the original Subpoena Duces Tecum for Deposition on May 5, 2006.
- (3) Plaintiff shall serve a copy of this order on Morris at both his address of record and the

address shown on Plaintiff's proposed order of contempt (Dkt. 58 at 5).

- (4) All other relief requested is denied.
- (5) Morris is admonished that failure to comply with this court's order and/or failure to appear at any subsequent deposition may result in further sanctions, including contempt.

DONE and **ORDERED** in Tampa, Florida this 26th day of February, 2007.


ELIZABETH A JENKINS
United States Magistrate Judge