IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CRAIG AMIN,

Plaintiff, ORDER

v. 05-C-543-C

LOYOLA UNIVERSITY CHICAGO,

Defendant.

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In this civil lawsuit, plaintiff Craig Amin, proceeding pro se, contends that defendant Loyola University Chicago breached its fiduciary duty to him by failing to adequately record and report benefits and to disclose documents relevant to his retirement plan as required under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461. Trial is scheduled for Monday, July 24, 2006.

From the beginning, this lawsuit has been plagued with discovery problems. Although plaintiff has not hesitated to call defendant on the carpet for even the most minor of alleged procedural missteps, see, e.g., dkt. #44, at 3 (order denying plaintiff's motion to strike affidavit of defense counsel on the ground that it was authorized by a notary employed by defense counsel in alleged violation of Wis. Stat. § 887.01(2)), plaintiff himself has

responded to only one of the six interrogatories issued to him by defendant on January 10, 2006, and to none of defendant's requests for document production. Although plaintiff received timely notice of a deposition scheduled for him on March 1, 2006, he refused to appear for reasons the magistrate judge found to be "specious." Dkt. #51, at 3. When defendant asked plaintiff to suggest a convenient time for his deposition, he refused to respond.

On April 26, 2006, defendant moved the court to order plaintiff to (1) appear for deposition; (2) respond to defendant's interrogatories and request for document production; and (3) pay defendant's reasonable costs in bringing the discovery motion. In an order dated May 19, 2006, Magistrate Judge Crocker granted the motion in its entirety. In addition to awarding costs to defendant, Judge Crocker "directed [defendant] to notice up plaintiff for a deposition in the near future [at which] plaintiff must appear to be deposed." Dkt. #51, at 3. The judge noted, "The record shows that plaintiff has resisted defendant's legitimate discovery attempts to the point of dropping incommunicado. There is no justification for plaintiff's conduct . . ." Id. Moreover, he warned that if "plaintiff fail[ed] to comply with any part of th[e] order, then he [would] face[] sanctions under Rule 37(b) and (d), including the possibility that th[e] court w[ould] dismiss his lawsuit." Id. at 4.

Now before the court is plaintiff's "Notice of Objection," which I construe as a motion for review of the magistrate judge's May 19 order pursuant to 28 U.S.C. §

636(b)(1)(A). In deciding whether to reconsider any pretrial matter determined by a magistrate judge, the court must find that the magistrate judge's order is "clearly erroneous or contrary to law." Although it is difficult to understand plaintiff's contentions, it appears that he is challenging several aspects of the May 19 order. First, he objects to the magistrate judge's assertion that he did not respond to defendant's motion to compel discovery. Although plaintiff does not contend that he did file a response, he argues that no response was necessary because his objections to the discovery requests were already part of the court's record. That may be so, but it does not change the fact that the magistrate judge's characterization of the facts is true: plaintiff did not file a formal response to defendant's motion.

Second, plaintiff objects to the cursory treatment his objections received. The magistrate judge ruled that plaintiff's objections were "specious" and his assessment is not erroneous. However, in the interest of explaining to plaintiff where he went wrong, I will address briefly his key contention: that despite the discovery obligations imposed upon him by the Federal Rules of Civil Procedure, "it is not Plaintiff's obligation to aid or prepare Defendant's defense or expound on Plaintiff's legal strategies as part of trial preparation in the adversarial American legal system or profess aspects of ERISA and tort law(s) that Defendant's counsel probably knows and are to be presented at trial." Dkt. #58, at 4.

Among the information plaintiff refused to provide defendant was a summary of his

name, address and employment history (which plaintiff asserted was "irrelevant"); an explanation why plaintiff believed defendant had violated his rights (which plaintiff contended was privileged "work product"); an accounting of the damages for which plaintiff sought compensation (a request to which plaintiff objected as premature); and a list of plaintiff's proposed witnesses (whose identity he believed was subject to "trial preparation privilege"). In addition, plaintiff refused to provide defendant with copies of correspondence he had allegedly sent to defendant in relation to the matters at issue in the lawsuit and notes he had taken or memoranda he had recorded related to the same events. Although plaintiff would have a legitimate objection to producing documents produced in direct anticipation of his lawsuit, the work product privilege did not permit him to refuse to produce *all* documents defendant requested. In short, the magistrate judge did not err when he found that plaintiff had violated his discovery obligations and therefore was subject to sanctions for his misconduct. Consequently, plaintiff's motion for reconsideration of the magistrate judge's May 19, 2006 order will be denied.

Several additional matters merit attention. In plaintiff's motion for reconsideration of the May 19 order, he makes reference several times to this court's alleged failure to rule on his motion for summary judgment, filed February 6, 2006. It is not clear why plaintiff believes his motion remains unresolved. In an order dated March 31, 2006, I denied his motion after finding that he had failed to plead facts sufficient to permit the court to rule

on its merits. Dkt. #44, at 15. It may be that plaintiff believed the court would vacate the denial of his motion after he submitted supplemental information regarding his standing to bring suit, as he was directed to do in the March 31 order. If so, he was mistaken. No motion is pending in this case.

Finally, it has come to the court's attention that despite the magistrate judge's unequivocal warning and the monetary sanctions the court imposed on plaintiff for his failure to comply with his discovery obligations, plaintiff continues to obstruct defendant's efforts to obtain discovery from him. On June 1, 2006, defendant filed a "supplemental request for attorney's fees," dkt. # 55, in which counsel for defendant avers that plaintiff refused again to appear for a deposition scheduled for May 30, 2006. According to defense counsel, on the eve of the last business day prior to the scheduled deposition, plaintiff informed defendant that the date was "problematic," though he did not say why. Plaintiff did not appear for deposition on May 30.

"When there is a clear record of delay or contumacious conduct" in a lawsuit, or "when other less drastic sanctions have proven unavailing," a court may dismiss a litigant's lawsuit with prejudice. Webber v. Eye Corp., 721 F.2d 1067, 1069 (7th Cir. 1983); Ellingsworth v. Chrysler, 665 F.2d 180, 185 (7th Cir. 1981). The district court may dismiss a case for discovery violations or bad faith conduct in litigation under either Fed. R. Civ. P. 37(b)(2)(C) or under the court's inherent authority to sanction. Greviskes v. Universities

Research Ass'n, Inc., 417 F.3d 752, 758 -759 (7th Cir. 2005). Although dismissal with prejudice is a harsh sanction that should be employed sparingly, plaintiff's repeated and flagrant disregard of his obligations in this case make dismissal appear an appropriate sanction. Therefore, I will give plaintiff until June 16, 2006, to show cause why this case should not be dismissed for his failure to comply with discovery obligations as directed in the court's May 19, 2006 order.

ORDER

IT IS ORDERED that plaintiff Craig Amin's motion for reconsideration of the magistrate judge's May 19, 2006 order is DENIED.

FURTHER, IT IS ORDERED that plaintiff may have until June 16, 2006, to show cause why this case should not be dismissed as a sanction for his failure to comply with discovery obligations as directed in the court's May 19, 2006 order. If, by June 16, 2006, plaintiff fails to submit a response as directed, the clerk of court is directed to enter

judgment in favor of defendant Loyola University Chicago and close this case.

Entered this 9th day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge