IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACK KIRBY d/b/a USSA CORP., Plaintiff,	:	
v.	:	
COASTAL SALES ASSOCIATES, INC. d/b/a COORDINATED STRATEGIC ALLIANCES, INC. AND CSA, INC., INTERNATIONAL STRATEGIC ALLIANCES, INC. AND RETAIL STRATEGIC ALLIANCES, INC., Defendants.	:	**MISCELLANEOUS ACTION NO. 99-MC-129**
A case pending in the United States District Court for the Southern District of New York under Clerk's Docket Number 98 civ 8304 (CM) (MDF)	:	

MEMORANDUM ORDER

This is a discovery-related dispute. It represents the culmination of a lengthy and often acrimonious process by which plaintiff attempted to enforce a third-party subpoena directed at QVC, Inc. ("QVC"). Presently before the court are QVC's Motions to Compel Payment of Costs incurred in ultimately complying with plaintiff's subpoena duces tecum and for Sanctions against plaintiff for withholding the requested payment. The cost to the parties of litigating this last matter left to dispute almost certainly exceeds the $3,020 in controversy.

QVC sells merchandise to the public through electronic mediums including direct response television programming. Plaintiff initiated an action in the Southern District of New

York to recover royalties from certain defendants with whom QVC conducts business (the "New York defendants"). Plaintiff served QVC with a third-party subpoena duces tecum pursuant to Fed. R. Civ. P. 45 to obtain, inter alia, documents containing purchasing, shipping and return information for products purchased by QVC from the New York defendants. QVC objected to the subpoena on the grounds that it was overly broad and sought confidential and proprietary information.

The court held a hearing on the parties' respective motions to quash and to compel. After the hearing, the parties reached an agreement and jointly submitted a proposed Order which was entered by the court. Pursuant to this order, QVC was to provide plaintiff with redacted purchase orders and ship orders issued by QVC to any New York defendant from 1995 to date; summaries of purchases and returns of products by QVC to any New York defendant from 1995 to date; and, one videotape from each calendar quarter from 1995 to date of sales presentations on the QVC channel featuring QVC products. For each of these categories, the plaintiff was to pay "the reasonable costs and expenses of QVC" in producing the items.

QVC provided plaintiff with the discovery and presented an invoice for $4,655.00 in costs. QVC personnel were billed at rates varying between $15 and $58 per hour depending upon the

task and the employee's level of expertise.[1] Plaintiff refuses to pay the invoice on the ground that $4,655 is unreasonable in light of the discovery provided. Plaintiff contends that during the hearing QVC agreed to bill plaintiff at the rate of $15 per hour and that the "reasonable costs and expenses" language in the consent order contemplates this rate. QVC counters that the $15 rate was to apply only to the costs involved in manually reviewing pre-1996 purchase information and that the other charges are reasonable for the tasks performed.

During the hearing, QVC represented that it did not maintain summary reports of its purchases and returns but would, at plaintiff's expense, create a summary report from its computer database. The parties also recognized that obtaining pre-1996 purchase information would require manual review of purchase orders from that time period, as this information was not computerized.

At the hearing, in referring to the manual review of the pre-1996 material and the retrieval of videotape presentations, the court perceived and stated that QVC agreed "to assign somebody at $15 an hour. That sounds pretty reasonable." No objection, protest or qualification was raised by QVC to this

[1]The invoice bills plaintiff $40 per hour for preparing the requested videotape presentations and between $30 per hour and $58 per hour for creating, reviewing and redacting a computerized summary report of its purchases and returns.

statement. QVC will be reimbursed at $15 per hour for these tasks.

Plaintiff objects to the number of hours claimed and the hourly rates for generating the computer summary. QVC billed just under seventy hours for compiling the summary. According to QVC, this included time spent in creating the computer program, extracting the required information, reviewing the accuracy of the information and correcting errors. Seventy hours does not appear to be unreasonable for the undertaking involved and there has been no convincing showing to the contrary.

QVC's hourly rate for generating the summary, however, is another matter. Rates exceeding $50 per hour seem excessive. Holly Mullan, who is responsible for QVC's inventory analysis reporting, was billed at $30 per hour. Tasks performed by QVC employees at the rate of $58 per hour were also performed by Ms. Mullan at $30 per hour. It reasonably appears that Ms. Mullan, or another employee at a comparable level, would be capable of generating the summary at $30 per hour. QVC will be reimbursed at $30 per hour for creating the computer summary.

In retrieving videotape copies of sales presentations, QVC reasonably expended 39.5 hours at $15 per hour. QVC reasonably expended 69.5 hours at $30 per hour in generating the computer summary.

ACCORDINGLY, this day of January, 2001, upon consideration of QVC's Motions to Compel Payment of Costs and for Sanctions, **IT IS HEREBY ORDERED** that the Motion to Compel is **GRANTED** in that plaintiff shall within ten days remit to QVC the amount of $2,337.50 for reasonable costs incurred in providing plaintiff with discovery and the Motion for Sanctions is **DENIED**.

BY THE COURT:

_____

JAY C. WALDMAN, J.