

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
WEST TENNESSEE HABILITATION)
LEARNING CENTER, TEMPO-READY,)
SEAN DIAZ and BRENDA DIAZ)
 Defendants.)

No. 03-2789 DV

ORDER DENYING J. WAYNE VANDERFORD'S MOTION TO QUASH
SUBPOENA DUCES TECUM

Before the court is the December 1, 2004 motion of J. Wayne Vanderford to quash a subpoena duces tecum served by the government on November 9, 2004 ordering Vanderford to appear on December 14, 2004, with certain documents before the Grand Jury of the United States District Court, Western District of Tennessee. Vanderford objects to the disclosure of the documents subpoenaed by the government on the grounds that the documents are protected by the accountant-client privilege pursuant to Tenn. Code Ann. § 62-1-116. The government contends that the accountant-client privilege is not recognized by federal courts, and, therefore, the documents must be produced by Vanderford as stated in the subpoena. This motion was referred to the United States Magistrate Judge for determination. For the following reasons, Vanderford's motion to quash is denied.

Privilege in federal cases are governed by Rule 501 of the Federal Rules of Evidence which states:

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience

F.R.E. 501. In federal question cases, questions of privilege are governed by federal common law. *Reed v. Baxter*, 134 F.3d 351, 355 (6th Cir. 1998). Where there are pendent state claims, federal common law still governs all claims of privilege. *Hancock v. Dodson*, 958 F.2d 1367, 1373 (6th Cir. 1992)(finding "in federal question cases where pendent state claims are raised, the federal common law of privileges should govern all claims of privilege raised in the litigation"); F.R.E. 501, 1974 Advisory Committee Notes ("the Federal law of privileges should be applied with respect to pendent State law claims when they arise in a Federal question case.")

The U.S. Supreme Court has specifically held that no confidential accountant-client privilege exists under federal law. *Couch v. U.S.*, 409 U.S. 322, 335 (1973). Thus, Vanderford's claim of accountant-client privilege cannot stand as a matter of law, and his objections are therefore overruled. Accordingly, Vanderford's

motion to quash the subpoena is denied.

IT IS SO ORDERED this 16th day of December, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE