

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

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EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 04-MC-028  
 )  
GUTTER GUARD, INC., )  
 )  
Defendants. )

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ORDER GRANTING PLAINTIFF'S REQUEST THAT DEFENDANT  
COMPLY WITH SUBPOENA NO. 250-A4-16

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On September 21, 2004, a hearing was held before this court in which the plaintiff, the Equal Employment Opportunity Commission, requested that defendant, Gutter Guard, show cause why they should not be compelled to comply with Subpoena No. 250-A4-16. Present in the courtroom was Celia Liner, attorney for the EEOC, and Robin Rasmussen, attorney for the defendant. For the following reasons, the EEOC's request that defendant comply with Subpoena No. 250-A4-16 is granted.

On July 9, 2004, pursuant to its authority under Title VII, the EEOC issued and served upon defendant a subpoena duces tecum, requiring defendant to produce information needed as a part of the EEOC's investigation of a charge of unlawful employment practices. Defendant refused to comply within the period designated in the

subpoena. Defendant also failed to file a petition to revoke or modify the subpoena within the five day limitation, thereby waiving any objections it may have to the enforcement of the subpoena. On July 27, 2004, the EEOC filed an application for an order to show cause why a subpoena should not be enforced. The court granted this motion on August 31, 2004, and a hearing was set for September 21, 2004.

During the hearing, it was conceded by the EEOC's attorney that the defendant had satisfied all the requests of the EEOC except for one. The EEOC's attorney stated that defendant had not complied with its request to produce a list providing the race and gender of its employees during the time in question. Defendant's attorney stated that this information was not available.

Under 29 C.F.R. § 1602.7 "every employer that is subject to title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees shall file with the Commission or its delegate executed copies of Standard Form 100 (otherwise known as an Employer Information Report, EEO-1)." These reports would contain the information sought by the EEOC. The parties agreed that the defendant had over 100 employees at the time in question. However, defendant's attorney stated that her client had failed to file EEO-1 reports. In light of the statutory requirement imposed on the defendant to compile and maintain this information, the court finds that it would not be burdensome for the defendant to

produce a report describing the race and gender of all employees for the fourth quarter of 2002 and the first quarter of 2003. Defendant is ordered to produce such a report, to be delivered to the EEOC's counsel, by October 21, 2004, which is thirty days from the date of this order.

IT IS SO ORDERED this 21st day of September, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE