

Friedman v Zurich Am. Ins. Co.
2022 NY Slip Op 31598(U)
May 12, 2022
Supreme Court, New York County
Docket Number: Index No. 155593/2017
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

AMY B. FRIEDMAN,

Index No. 155593/2017

Plaintiff

- against -

DECISION AND ORDER

ZURICH AMERICAN INSURANCE COMPANY,

Defendant

LUCY BILLINGS, J.S.C.:

Plaintiff claims employment discrimination based on her gender and disability. She moves to compel defendant, which remains her current employer, to search the electronically stored information (ESI) of document custodians Japhet Boutin and Giselle Dexter and to produce recent pay records for other employees whose pay records defendant previously produced and pay records for all Claims Counsel in the Management Solutions Group, where she works. C.P.L.R. § 3124. For the reasons explained below, the court denies her motion.

Plaintiff seeks to include Boutin and Dexter as document custodians based on an exchange of email messages between the two January 17, 2017, where they mentioned plaintiff being moved from a particular client's account. Plaintiff casts the email exchange, which was produced January 26, 2022, as indicating that Dexter was responsible for investigating plaintiff's complaint about her reassignment.

Defendant concedes that Boutin was a custodian for purposes

of its prior ESI document collection and has agreed to supplement its prior production of Boutin's ESI documents. C.P.L.R. § 3101(h). Plaintiff in turn agrees that, to the extent the motion seeks Boutin's ESI documents, it is therefore moot.

Defendant opposes the remainder of plaintiff's motion on the grounds that disclosure is concluded, plaintiff is seeking documents never formally or timely requested, and an order filed October 8, 2019 (Kalish, J.), bars new document requests. That order, based on the parties' stipulation, imposed a deadline of November 8, 2019, for plaintiff to move to compel any remaining disclosure and concluded that: "All other discovery is complete. No further issues may be raised." NYSCEF Doc. No. 75. Notably, when the court (Kalish, J.) in March 2020 decided plaintiff's November 2019 motion to compel disclosure, the court did not give plaintiff another opportunity to move to compel disclosure if documents produced in compliance with the March 2020 decision indicated potential further disclosure that plaintiff might seek. Nonetheless, and only now, plaintiff seeks relief from the October 2019 stipulation and order, claiming she only recently learned of Dexter's role from the document defendant produced January 26, 2022.

First, this document does not clearly indicate that Dexter played a significant role in the investigation. The fact that plaintiff, armed with documents produced before November 2019 indicating Dexter's role as much as the recently received exchange, did not uncover Dexter's involvement via depositions of

defendant's witnesses also weighs against plaintiff's claim that defendant concealed Dexter's significance as a participant in any of the conduct about which plaintiff complains. Plaintiff's showing is simply not persuasive enough to merit relief from the prior order barring further disclosure requests or consideration of further disclosure issues.

Regarding plaintiff's request for production of pay records for all defendant's employees holding her position of Claims Counsel, defendant produced those records September 18, 2020, pursuant to the parties' stipulation. While plaintiff now seeks more recent pay records to support her damages that continue to accrue, that stipulation resolved plaintiff's prior motion to compel those records on an ongoing basis and therefore bars her current motion to compel records after the date previously stipulated. NYSCEF Doc. No. 111.

Moreover, plaintiff maintains that this current request is new and not pursuant to defendant's obligation to update the prior production pursuant to C.P.L.R. § 3101(h). If the request is in fact new, plaintiff again provides no explanation for failing to request these records within the deadline that the October 2019 stipulation and order imposed or why this new request warrants relief from that stipulation and order barring further document requests. For the same reasons, plaintiff's new, albeit narrower request for pay records of other Claims Counsel employed by defendant in the Management Solutions Group, which plaintiff also moves to compel, fares no better.

For all the above reasons, the court denies plaintiff's motion to compel production of documents in its entirety.

C.P.L.R. § 3124.

DATED: May 12, 2022

Lucy Billings

LUCY BILLINGS, J.S.C.

**LUCY BILLINGS
J.S.C**