

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON
BEHALF OF ITSELF AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

- *against* -

HOUSEHOLD INTERNATIONAL, INC., ET. AL.,

Defendants.

Lead Case No. 02-C-5893
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

**AFFIDAVIT OF LANDIS C. BEST IN SUPPORT OF THE HOUSEHOLD
DEFENDANTS' MOTION FOR FEES AND EXPENSES**

REDACTED VERSION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

LANDIS C. BEST, being first duly sworn, deposes and says:

1. I am a member of the bar of the State of New York and a member of the firm Cahill Gordon & Reindel LLP, attorneys for defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer, and J.A. Vozar (the "Household Defendants") in this action. I submit this affidavit to place before the Court certain information and documents referenced in the Household Defendants' Motion for Fees and Expenses Pursuant to Federal Rule of Civil Procedure 30(g) and 28 U.S.C. § 1927.

2. Attached hereto as Exhibit A are true and correct copies of the subpoenas served on Curt Cunningham and Walter Rybak.

3. Attached hereto as Exhibit B are true and correct copies of the Notice of Deposition of Curt Cunningham and the Notice of Deposition of Walter Rybak.

4. On or about Thursday, September 8, 2005, I received a phone call from Monique Winkler, counsel for Plaintiffs, regarding the dates for the Rybak and Cunningham depositions noticed and subpoenaed by Plaintiffs. I confirmed that the witnesses were prepared to proceed on the dates in the notices and subpoenas. Ms. Winkler informed me that despite the fact that Plaintiffs had noticed Mr. Cunningham's deposition for Tuesday, October 4, this date was in fact no good for Plaintiffs. She suggested that the deposition be moved to Friday, October 7. I told her I would have to check on Mr. Cunningham's schedule. On Monday, September 12, 2005, I informed Ms. Winkler via email that October 7 worked for Mr. Cunningham. Attached hereto as Exhibit C is a true and correct copy of my September 12, 2005, 8:08 p.m. email to Monique Winkler.

5. Attached hereto as Exhibit D is a true and correct copy of my September 2, 2005 letter on behalf of the Household Defendants to the Court.

6. Attached hereto as Exhibit E is a true and correct copy of Joshua M. Newville's September 29, 2005 letter to Azra Mehdi.

7. Attached hereto as Exhibit F is a true and correct copy of Azra Mehdi's September 29, 2005, 7:18 p.m. email to me.

8. Attached hereto as Exhibit G is a true and correct copy of Azra Mehdi's September 29, 2005, 10:17 p.m. email to me.

9. I was not in my New York office on September 29, 2005 and September 30, 2005. I was in Chicago on business and traveled back to New York on Friday, September 30.

10. Plaintiffs' counsel Ms. Mehdi left a voicemail message for me on Friday afternoon, September 30, 2005 regarding certain questions as to native format emails and electronic documents that had been produced the previous day by the Household Defendants. Ms. Mehdi made no mention in that voicemail of the possibility that Plaintiffs would cancel the depositions of Messrs. Cunningham and Rybak scheduled for the following week.

11. Attached hereto as Exhibit H is a true and correct copy of my September 30, 2005, 8:27 p.m. email to Azra Mehdi.

12. On Monday morning, October 3, 2005, Defense counsel Laura Fraher, Joshua Newville, David Owen, and I traveled from New York City to Chicago, Illinois to prepare witnesses Curt Cunningham and Walter Rybak and to attend their depositions later in the week. I planned to telephone Ms. Mehdi regarding her questions about the native format production during the lunch hour due to the time difference on the West Coast where Ms. Mehdi's office is located.

13. Attached hereto as Exhibit I is a true and correct copy of Azra Mehdi's October 3, 2005, 1:08 p.m. email to me.

14. I telephoned Ms. Mehdi during the lunch break on Monday, October 3. Also participating on the telephone call were Joshua Newville and Adam Deutsch, counsel for Household, as well

as Monique Winkler, counsel for Plaintiffs. During this phone call, Ms. Mehdi advised that Plaintiffs disputed that Defendants had properly produced native format emails for Messrs. Cunningham and Rybak pursuant to the native format agreement because Plaintiffs had not received any Housemail emails as opposed to Lotus Notes emails. Plaintiffs suggested that they might seek to hold open the depositions of Messrs. Cunningham and Rybak until Plaintiffs received further document production. I discussed the native format agreement with Ms. Mehdi and realized that she appeared to have misunderstood its terms regarding the Housemail emails. In particular, I explained that Housemails would only be produced in paper form pursuant to the native format agreement. I also explained that, as Housemail was a legacy email system phased out at Household by October 2002, *there were no active Housemails that could be searched electronically.* When Ms. Mehdi asked about whether Household had searched any Housemail backup tapes, I answered no and explained that the parties had not addressed the subject of restoration and search of backup tapes as part of the native format agreement — which by its terms applies to “active” and “archived” Lotus Notes emails and does not mention backup tapes. Moreover, I pointed out that the parties had never once discussed the subject of backup tapes as part of the negotiations leading to the native format agreement. I further explained that, regardless of her apparent misunderstanding, I was unsure whether any Housemail backup tapes existed prior to August 2002. I stated that I would look into the matter and contact Plaintiffs’ counsel later in the day. I also reminded Plaintiffs’ counsel that they had taken the Rule 30(b)(6) deposition of Household employee Christine Cunningham regarding Household’s email system.

15. Attached hereto as Exhibit J is a true and correct copy of Azra Mehdi’s October 3, 2005 letter on behalf of Plaintiffs to the Court (without exhibits).

16. Without realizing that Plaintiffs had sent their preemptive letter to the Court, I called Plaintiffs' counsel at the end of the day as promised, at approximately 5:25 p.m. Chicago time. Not able to locate Ms. Mehdi, I spoke with Ms. Winkler. Ms. Winkler informed me that Plaintiffs had sent a letter to the Court and had cancelled the depositions. I responded that Defendants were dismayed that Plaintiffs had taken such action without waiting to hear from defense counsel. I further reported that, to the best of my knowledge, *there were no Housemail backup tapes prior to August 31, 2002*. I asked that Plaintiffs reconsider canceling the depositions. I also informed Ms. Winkler that Defendants reserved all rights with respect to the witnesses.

17. Attached as Exhibit K is a true and correct copy of Azra Mehdi's October 3, 2005, 8:56 p.m. email to me.

18. Attached hereto as Exhibit L is a true and correct copy of my October 4, 2005 letter on behalf of the Household Defendants to the Court (without exhibits).

19. Attached as Exhibit M is a true and correct copy of Monique C. Winkler's October 4, 2005 letter to me.

20. Attached as Exhibit N is a true and correct copy of my October 4, 2005, 4:11 p.m. email to Plaintiffs' counsel, including Azra Mehdi and Monique Winkler.

21. On October 6, 2005, the witness, Mr. Rybak, accompanied by defense counsel — Joshua Newville, Adam Deutsch, and me — arrived at the offices of Miller Faucher and Cafferty LLP at approximately 9:15 a.m., pursuant to the subpoena and deposition notice issued by Plaintiffs. Defense counsel and Mr. Rybak were informed by a receptionist that the deposition was can-

celled. The receptionist further informed defense counsel that plaintiffs' counsel was not available to discuss the situation at that time.

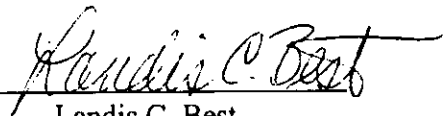
22. Attached hereto as Exhibit O is a true and correct copy of Adam Deutsch's October 6, 2005, 11:11 a.m. email to Marvin Miller.

23. Attached hereto as Exhibit P is a true and correct copy of Marvin Miller's October 6, 2005, 1:30 p.m. email to Adam Deutsch.

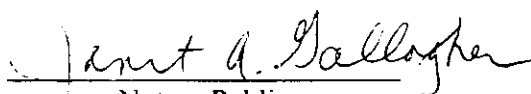
24. Attached hereto as Exhibit Q is a true and correct copy of excerpts from the November 11, 2004, deposition transcript of Household's Rule 30(b)(6) witness Christine Cunningham.

25. Attached hereto as Exhibit R is a true and correct copy of the native format agreement, which is attached to my March 10, 2005 letter to Luke Brooks.

26. Attached hereto as Exhibit S is a true and correct copy of the confidential September 3, 2003 letter from Stewart T. Kusper of KMZ Rosenman to Kent W. McAllister, of the SEC, bearing production number HHS 02764998, which upon information and belief was produced to Plaintiffs on or about March 17, 2005.


Landis C. Best

Sworn to before me this
13th day of October, 2005.


Notary Public

JANET A. GALLAGHER
Notary Public, State of New York
No. 01GA4785575
Qualified in Nassau County 2005
Commission Expires Dec. 31, 2005