

United States District Court  
For the District of Wyoming

---

IN RE APPLICATION OF Victor  
Mikhaylovich Pinchuk, Purusant to 28  
U.S.C. § 1782 for Judicial Assistance in  
Obtaining Evidence in this District

Civil No. 13-CV-251-J

---

**ORDER GRANTING APPLICANT PINCHUK'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

---

This matter comes before the Court on *Applicant Pinchuk's Motion to Compel Production of Documents* [Doc. 7]. The Court has carefully considered the Motion, being no Response filed thereto, and is fully advised in the premises. The Court FINDS:

**BACKGROUND**

Applicant Victor Mikhaylovich Pinchuk, a Ukrainian national and resident, is a claimant in a civil action in the Republic of Cyprus and in a pending arbitration in the London Court of International Arbitration against two of his business partners. On January 31, 2014, the Honorable Alan B. Johnson granted Applicant's request for discovery under 28 U.S.C. § 1782 (West, 2014), which provides parties authority to seek domestic discovery for use in litigation before foreign and international tribunals. [Doc. 6]. Judge Johnson permitted Applicant to issue and serve subpoenas on Movant Ferrost, LLC for the production of several documents, ordered Ferrost, LLC to produce the requested documents within thirty days of service, and required Ferrost LLC to preserve documents and evidence potentially relevant to the subject matter of Applicant's requests. [Doc. 6, pp. 5-7]. Applicant contends he served the subpoena on February 5, 2014 and made any response and production due

March 12, 2015 by 5:00 p.m., which was thirty-five days after service. Applicant states Ferrost, LLC has not complied with the subpoena or filed any objections.

Applicant filed the current Motion April 21, 2014 asking the Court to compel Ferrost, LLC to produce all documents in its possession, custody, or control responsive to the subpoena and to deem any objection to the subpoena waived.

### **DISCUSSION**

The Local Rules of the United States District Court for the District of Wyoming provide that a party opposing a motion has fourteen days after the filing of the motion to submit a written response. U.S.D.C.L.R. 7.1(b)(1)(B). “The Court may, in its discretion, consider the failure of a responding party to file a response within the fourteen (14) day time limit . . . as a confession of the motion.” *Id.* The Court notes Applicant filed his Motion April 21, 2014, making any Response due on or before May 5, 2014. As of the date of this Order, Ferrost, LLC has not responded. Accordingly, the Court deems Ferrost, LLC’s failure to respond as a confession of Applicant’s Motion.

If a nonparty receives a subpoena and he objects to it, he has various options. For example, he can file a motion to quash or modify the subpoena pursuant to Federal Rule of Civil Procedure 45(d)(3), seek a protective order under Rule 26(c), or he may provide written notice of his objection under Rule 45(d)(2)(B). *W. Res., Inc. v. Union Pac. R. Co.*, No. 00-2043-CM, 2002 WL 1822425, at \*1 (D. Kan. July 23, 2002). Ferrost, LLC has not filed any motions seeking to quash or modify the subpoena or for a protective order. FED. R. CIV. P. 45(d)(3), 26. Concerning written objections, the Rules mandate that persons commanded to produce documents, etc. in response to a subpoena must make objections in writing “before

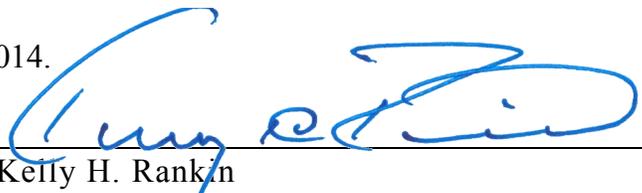
the earlier of the time specified for compliance or 14 days after the subpoena is served.” FED. R. CIV. P. 45(d)(2)(B). According to Applicant, Ferrost, LLC never made any objections, whether before the time compliance was due or fourteen days thereafter. Ferrost, LLC thus had, and continues to hold, a duty to respond to the subpoena. FED. R. CIV. P. 45(e). If Ferrost, LLC fails to comply with this Court’s order directing it to produce the information and those documents sought in the subpoena, the Court may hold it in contempt. FED. R. CIV. P. 45(g) (“The court for the district where compliance is required . . . may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.”).

Courts generally hold failure to object in writing to a *subpoena duces tecum* within the time specified constitutes a waiver of objections. *W. Res., Inc.*, 2002 WL 1822425, at \*1 (citing *Wang v. HSU*, 919 F.2d 130 (10th Cir. 1990)). Because Ferrost, LLC has not objected to the subpoena, the Court deems any objections now waived.

NOW, THEREFORE, IT IS ORDERED *Applicant Pinchuk’s Motion to Compel Production of Documents* [Doc. 7] be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED Movant Ferrost, LLC shall produce all documents in its possession, custody, or control responsive to the subpoena within fourteen days from the date of this Order, which is on or before May 21, 2014. If Ferrost, LLC fails to comply with this Order, the Court may hold it in contempt.

Dated this 7th day of May, 2014.

  
\_\_\_\_\_  
Kelly H. Rankin  
United States Magistrate Judge