

CASE PROFILE

Acorn v. County of Nassau

Failure to implement a timely litigation hold amounts to gross negligence

KEY INFORMATION

Reference No.:	2009 U.S. Dist. LEXIS 19459,WL 605859
Date:	March 9, 2009
Court:	U.S. District Court for the Eastern District of New York
Judge:	U.S. Magistrate Judge William D. Wall
Sector:	Public Sector/Civil Rights
Type:	Housing/Accommodations Dispute

CASE SUMMARY

In this case, plaintiff claimed that Nassau County conspired with local officials to prevent zoning for affordable housing. Plaintiff sought sanctions against the county, including an adverse inference instruction alleging that Nassau County failed to implement a litigation hold in a timely manner, which resulted in the destruction of potentially relevant documents. Plaintiff also claimed that the county failed to adequately search for potentially responsive electronically stored information (ESI).

In response, defendant argued that it had initially given a "verbal hold" to primary custodians and about 15 other individuals. In addition, it took quick action upon denial of its motion to dismiss. However, no litigation hold regarding documents that might be relevant to plaintiff's claim went out until nearly two months after the county's motion to dismiss the complaint was denied. The county also argued that it did not possess the resources to locate and access non-email ESI.

The court noted counsel's obligation to oversee compliance with such a hold once it is placed. The court questioned why the analysis leading to the placement of that hold could not also have been used to prevent the destruction of documents in those departments. The court also observed that no evidence was submitted of follow-up regarding the verbal hold.

OUTCOME

Finding that plaintiff did not sufficiently demonstrate that any lost materials would have been favorable to them or proved that purposeful deletion of documents or email had occurred, the court denied the motion for adverse inference instruction.

However, the court found that the county's failure to implement a litigation hold in a timely manner amounted to gross negligence. The county was ordered to pay plaintiffs' costs, including attorney fees, in seeking sanctions in order to discourage the county "from repeating its cavalier decision to forego implementing a litigation hold while a motion to dismiss is pending."

Visit www.legalholdpro.com or call 888.376.0666 for more information