

**IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA**

**AL GRAVES and IRENE GRAVES,**  
Plaintiffs,

vs.

**FIRST NATIONAL BANK OF  
AINSWORTH,**  
Defendant.

Case No. 6841

**ORDER ON DISCOVERY**

**DATE OF HEARING:** May 17, 2000.

**TYPE OF HEARING:** Telephone (per Rule 8-4, no evidence, record waived).

**APPEARANCES:**

For plaintiff(s): W. Gerald O’Kief.  
For defendant(s): Stanley R. Parker.

**SUBJECT OF HEARING:** (1) plaintiffs’ objection to interrogatories and motion to produce (filed 4/25/00), and, (2) defendant’s motion to compel (filed 5/5/00).

**FINDINGS:** The court finds:

1. The plaintiffs purport to raise objections to interrogatories directly to the court. They do not seek a protective order pursuant to Discovery Rule 37. Under Discovery Rule 33, objections to interrogatories are served directly upon the party propounding the interrogatories. Unless the party propounding the interrogatories moves to compel answers over objections (per Rule 37) or the party receiving the interrogatories submits a proper motion for protective order (per Rule 37), there is nothing upon which the court is properly called to rule. The court declines to rule on objections not properly before the court.

2. The defendants move the compel as to interrogatories and requests for production as to which neither answers nor objections were submitted. The motion does not deal with any of the items in the plaintiffs’ objections referred to above. The motion to compel has merit and must be sustained.

3. Pursuant to Discovery Rule 37(a)(4), if the motion is granted, the court “shall, after

opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust."

a. The plaintiffs neither objected to nor answered the subject interrogatories or requests for production. They simply failed to answer. The motion to compel was clearly justified and there was no substantial ground for opposition to the motion.

b. The court finds no other circumstances which would make an award of expenses unjust.

c. Consequently, the defendant is entitled to an order requiring the plaintiffs to pay the defendant's reasonable expenses including attorney's fees in obtaining the order.

4. Because the matter was heard by telephone, the court will allow only a minimal amount of \$150.00, to be taxed as costs upon entry of final judgment.

5. If either party desires a formal hearing as to the amount of the expenses, a written request for hearing shall be filed within 10 days of the date of entry of this order.

**ORDER:** IT IS THEREFORE ORDERED that:

1. The court declines to consider the plaintiffs' objections to interrogatories unless and until properly presented for consideration.

2. The motion to compel is granted, and pursuant thereto:

a. The plaintiffs are ordered to fully and completely answer the interrogatories and requests for production itemized in paragraph 8 of the defendant's motion to compel discovery, and,

b. To do so within 15 days of the date of this order.

3. The plaintiffs are ordered to pay \$150.00 as reasonable expenses of obtaining this order, to be taxed as costs in favor of the defendant and against the plaintiffs upon entry of final judgment. The court will reconsider the amount thereof if either party requests a hearing regarding the amount by written request filed with the clerk within 10 days of the date of this order.

4. This order is interlocutory in character, and does not constitute a final order.

Signed at Ainsworth, Nebraska, on May 17, 2000.

DEEMED ENTERED upon the date of filing by the court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Enter on Justice cost register an item of cost of \$150.00 as incurred by defendant for “Rule 37(a)(4) expenses.”  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Note the decision on the trial docket as: [date of filing] Signed “Order on Discovery” entered.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mailed to:

**BY THE COURT:**

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**William B. Cassel**  
District Judge