

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 12-19096
)
MICHELLE PARHAM,) Chapter 13
)
Debtor.) Chief Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION AND**
) **ORDER FINDING GREENE ARCHES**
) **INC. AND FOREVER YOUNG**
) **ENTERPRISES, INC. IN CONTEMPT**

The debtor’s employers Greene Arches, Inc. and Forever Young Enterprises, Inc. are found to be in contempt of court and sanctioned based on their failure to comply with the wage order entered in this case, as discussed below.

JURISDICTION

The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2), and it is within the court’s constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011) and *Executive Benefits Insur. Agency v. Arkison*, 134 S.Ct. 2165 (2014).

FACTS AND DISCUSSION

A wage order entered on January 9, 2014 requires the debtor’s employers to deduct \$767.45 from the debtor’s wages each month and pay them to the Chapter 13 trustee.¹ (Docket 12). The debtor alleged non-compliance with the order and moved for an order directing Greene

¹ Although the employer is identified as Green Arch Management Co. in the order, it is undisputed that Greene and Forever Young are the debtor’s employers and were the responsible parties.

Arches, Inc. (Greene Arches) and Forever Young Enterprises, Inc. (Forever Young) to appear and show cause why they should not be held in contempt and sanctioned for the failure to comply. The court granted the motion and entered an order which required those entities to appear through a representative to show cause why they should not be held in contempt and sanctioned for failing to comply with the wage order. (Docket 39).

The court held the show cause hearing on January 6, 2015. Pat Nally, the office manager for Greene and Forever Young, appeared and acknowledged that the employers failed to comply with the wage order. While the employers withheld the money from the debtor's paycheck, they kept it rather than sending it to the chapter 13 trustee. As a result, the chapter 13 trustee filed a motion to dismiss for failure to fund the plan, which motion is pending. Eventually, the employers sent some, but not all, of the money to the trustee. By the employers' own admission, they violated the wage order.

The court adjourned the hearing several times to allow the parties to discuss an appropriate sanction. At the final hearing held on February 10, 2015, debtor's counsel appeared and reported that the matter had not been settled. No one appeared for Greene and Forever Young.

The court must first consider whether Greene and Forever Young are in contempt of the wage order. The court's contempt powers derive from "Bankruptcy Code § 105(a) and the inherent power of a court to enforce compliance with its lawful orders." *In re Walker*, 257 B.R. 493, 496 (Bankr. N.D. Ohio 2001) (citations omitted). Contempt must be shown by clear and convincing evidence that the alleged contemnor violated a definite and specific court order which required the performance or the nonperformance of an act with knowledge of that court

order. *Id.* at 497. “Willfulness is not an element of civil contempt and intent to disobey the order is irrelevant.” *Id.* The alleged contemnor may defend by showing an inability to comply with the order. *Id.*

The facts clearly and convincingly establish that Greene and Forever Young are in contempt of the wage order. Their representative acknowledged they knew of the order and failed to comply with its terms. It further appears that they have not complied to date because the chapter 13 trustee reported on February 10, 2015 that plan payments are currently \$998.34 in arrears. The court finds, therefore, that Greene and Forever Young are in contempt of court.

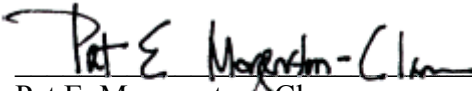
The remaining issue is the appropriate sanction. A court may impose a fine as a sanction for civil contempt. “One kind [of fine] is intended to compensate for damages caused by the contemnor’s noncompliance [with the court order] . . . [and] must be based on evidence of actual loss.” *Id.* at 498. A coercive per diem fine may also be imposed under appropriate circumstances to encourage compliance with a court’s order. *Id.* The court finds that a fine in the form of an award of attorney fees is appropriate to compensate the debtor for the expense she has incurred in addressing the contempt.

CONCLUSION

For the reasons stated, Greene Arches, Inc. and Forever Young Enterprises, Inc. are found to be in civil contempt based on their failure to comply with the terms of the wage order. They are instructed to file an accounting by **February 18, 2015** as to the amounts that have been deducted from the debtor’s wages under the wage order and are to promptly forward those funds to the chapter 13 trustee. If this is not done, the court will impose **a daily fine in the amount of \$100.00** to encourage compliance. Additionally, debtor’s counsel is to file an updated fee

statement by **February 17, 2015**. If Greene and Forever Young object to any of those fees, their objection is to be filed by **March 3, 2015**. The court will decide the amount of the sanction based on those filings. The hearing on the chapter 13 trustee's motion to dismiss for failure to fund is adjourned to **February 24, 2015** at 8:30 a.m.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

To be served by the clerk's office by regular U.S. mail on:

Greene Arches, Inc., 154 West Aurora Road #356, Sagamore Hills, Ohio 44067

Mr. Ryan Morley, Statutory Agent for Greene Arches, Inc., 6100 Oak Tree Blvd.,
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