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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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NORTHERN DISTRICT OF OHIO
LEVEL 1015

In re:) Case No. 99-12534
)
GEORGEL DINU,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER RE (1) SHOW CAUSE**
) **ORDER ON GEORGEL DINU AND**
) **(2) SHOW CAUSE ORDER ON**
) **MICHAEL TROY WATSON, ESQ.**

INTRODUCTION

The Debtor Georgel Dinu failed to appear for a Rule 2004 examination set by Court Order in this Chapter 7 case. National City Bank had requested the exam to have the Debtor endorse a check issued by an insurance company relating to a truck in which the Bank held a security interest. Attorney Michael Troy Watson wanted his legal fees to be paid from the check, but the Bank would not agree to do so. When the Debtor did not appear at the exam, the Bank moved for an order requiring the Debtor to appear and show cause why he should not be held in contempt for violating the Court Order. Mr. Watson opposed that motion on the Debtor's behalf. He defended the failure to appear by representing that the Debtor did not attend because he only speaks Romanian and requires a translator at the examination.

The issues now before the Court are whether the Debtor willfully failed to obey the Order to appear at the exam and whether Mr. Watson violated Bankruptcy Rule 9011 in representing the reason why the Debtor did not appear. Because the Court finds that there is insufficient evidence to show that the Debtor's actions were willful, he will not be found in contempt. With respect to Mr. Watson, the Court concludes that the Debtor speaks English, that Mr. Watson

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either knew this or could have learned it on reasonable inquiry, and that the dispute over Mr. Watson's legal fees, not a need for a translator, accounted for the Debtor's failure to appear at the exam. Consequently, the representations made violated Bankruptcy Rule 9011 and are sanctionable.

PROCEDURAL HISTORY

This case is before the Court on two Orders:

1. **Order on Georgel Dinu to appear and show cause why he should not be held in contempt based on a failure to appear at a Rule 2004 examination. (Docket 50).**

This Order was issued on the motion of National City Bank (the "Bank"). (Docket 28).

The Debtor opposed the motion. (Docket 30, 31). The Court held hearings on March 30, 2000 and April 27, 2000 before granting the motion and issuing the Order.

2. **Order on Attorney Michael Troy Watson to appear and show cause why he has not violated Federal Rule of Bankruptcy Procedure 9011 and why monetary sanctions should not be imposed. (Docket 49).¹**

¹ The Rule provides in relevant part:

(b) **Representations to the Court.** By presenting to the court . . . a petition . . . or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; [and]

* * *

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; . . .

* * *

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

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The Court issued this Order *sua sponte*.

An evidentiary hearing was held on June 23, 2000 on both Show Cause Orders because they arise out of the same circumstances.² Michael Troy Watson and Michael Goins appeared for the Debtor and Mr. Watson appeared on his own behalf. Chapter 7 Trustee Virgil E. Brown, Jr. appeared, as did Lenore Kleinman on behalf of the United States Trustee and Kristin Going on behalf of National City Bank. Adam Baker, former Chapter 7 counsel to the Debtor, also appeared. The Respondents called two witnesses: the Debtor's brother Marius Dinu and Razban Murea. Additionally, all counsel and the United States Trustee made statements which the Court has considered in reaching its decision.

FACTS AND LAW

The Debtor is a Romanian native who has lived in the United States since about 1990 and has worked as a commercial truck driver in affiliation with his brother, Marius Dinu. The Debtor consulted attorney Adam Baker about filing for protection under the bankruptcy laws at some point before November 18, 1998.

On November 18, 1998—before any bankruptcy was filed—the Debtor was involved in an accident and suffered very serious injuries. The truck he was driving was demolished. The Bank held a lien on the truck, which was insured by Progressive Insurance. On November 22, 1998, and while the Debtor was in the hospital in a coma, Marius Dinu signed a contingency fee agreement with Mr. Watson which called for him to represent the Debtor in connection with the accident. Mr. Watson had previously represented Marius Dinu in several matters, but had not represented the Debtor.

² At that time, the Court advised the parties that it would consider all filed documents and statements made at the two earlier hearings, as well as statements and evidence from the June 23d hearing.

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Some time later, the Debtor re-established contact with Mr. Baker and decided to go forward with the bankruptcy filing. Mr. Baker reviewed the petition and related papers with the Debtor before filing the bankruptcy case on April 6, 1999. The conversations between Mr. Baker and the Debtor, both before and after the accident, were in English, without a translator present. On May 17, 1999, Chapter 7 Trustee Virgil Brown, Jr. conducted the meeting of creditors called for by 11 U.S.C. § 341. Again, the examination was held in English, without a translator present. Mr. Baker attended and represented the Debtor at that exam.

Mr. Watson claims he negotiated with Progressive before and after the bankruptcy was filed. The Court is not making any finding on the role Mr. Watson played in that regard. Any such involvement, however, was at least initially without the knowledge of the Chapter 7 Trustee. Ms. Going, similarly unaware of any involvement on the part of Mr. Watson, was also in contact with Progressive on behalf of her client, the Bank.³

On June 8, 1999, the Bank moved to examine the Debtor under Federal Rule of Bankruptcy Procedure 2004. That motion was granted and the examination went forward on June 16, 1999 with Mr. Baker present as counsel for the Debtor. The deposition was held in English, without a translator present.

Eventually, Progressive issued a check payable to the Debtor, Mr. Watson, and the Bank. Ms. Going asked Mr. Watson to endorse the check, but he refused to do so unless he received his attorney fees. Ms. Going took the position that he was an unsecured creditor in the bankruptcy and she could not agree to the demand. To break the impasse, the Bank obtained a substitute

³ The Trustee apparently learned about the insurance claim from the Bank. In any event, the Trustee has no quarrel with the Bank about the timing of that disclosure or the manner in which the Bank pursued the insurance issue.

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check from Progressive payable only to the Debtor and the Bank. Mr. Watson was not pleased by this turn of events.

The Bank then filed a motion for a second 2004 exam which was granted by Order dated January 18, 2000. The Order required the Debtor to appear at Ms. Going's office on February 2, 2000 and was served both on the Debtor and Mr. Watson. The purpose of the exam was to try to resolve the dispute by having the check endorsed, the secured amount paid to the Bank, and the balance turned over to the Trustee. Neither the Debtor nor Mr. Watson, however, appeared.

On March 1, 2000, the Bank moved for an order requiring the Debtor to appear and show cause why he should not be held in contempt based on the failure to comply with the 2004 Order. In opposition, Mr. Watson filed the Response that is central to the issues presently before the Court. The Response says:

The Debtor's [sic] is of **ROMANIA DESCENT AND CANNOT MAKE AN APPEARANCE FOR EXAMINATION WITHOUT A TRANSLATOR.**

Counsel for National City Bank has been informed of the need for a translator for the Debtor to make an appearance for any examination.

Counsel has failed to address the need for a Romania translator prior to this date.

(Docket 30) (emphasis in the original).

Shortly after that, Mr. Watson filed a second Response in which he requested an administrative expense payment of \$8,915.43, representing the amount due under the fee agreement. (Docket 31). Attached to this Response is a letter dated March 26, 2000 to Ms. Going in which Mr. Watson returned the second check without Mr. Dinu's endorsement, demanded that the Bank endorse it first and deliver it to him, and stated he has "informed you previously of a need for a translator for Mr. Dinu, as he does not speak English."

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After two hearings, including an adjournment to obtain transcripts from the 341 exam and the first 2004 exam,⁴ the Court issued the Order to Show Cause against the Debtor and also the Bankruptcy Rule 9011 Order against Mr. Watson. The final hearing then took place on June 23, 2000.

At the hearings, Mr. Watson defended his representations by stating that his contacts with the Debtor had taken place through his brother or with his brother present, and so he assumed or believed the Debtor did not speak English. He argued that he told Ms. Going about this issue before the scheduled February 2 exam and pointed to his March 26 letter for support. He also contended that the Debtor suffered brain damage and offered the 1998 hospital records.

The Debtor's brother and Razban Murea testified on behalf of the Respondents. Mr. Murea is a social friend of the Dinus, worked at one time with Marius Dinu, and has also been a client of Mr. Watson's. After observing Messrs. Dinu and Murea at the hearing and considering the family, social, and business connections that the witnesses have to the Debtor and to Mr. Watson, the Court finds credible only these parts of their testimony: that the Debtor suffered serious injuries in 1998, that the Debtor speaks English less than fluently, and that since the accident the Debtor has had some trouble processing information in any language.

The Court also finds that despite the Debtor's injuries, he still spoke English after the accident as evidenced by the fact that he spoke English with Mr. Baker, he reviewed his bankruptcy filing in English, he participated in the § 341 meeting in English, and he was deposed in English at the first Rule 2004 examination. Any difficulty the Debtor experienced in processing information post-accident did not, therefore, prevent him from speaking English.

⁴ See Docket 38, 40, and 41 (transcript of April 27, 2000 hearing). At the April 27, 2000 hearing, the Court ordered the Debtor to endorse the check over to the Chapter 7 Trustee, which he did.

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Even if Mr. Watson's experience with the Debtor was as he described, a direct conversation with his client, a review of the bankruptcy file, and/or a phone call to either Mr. Baker or Trustee Brown would have led to the conclusion that the Debtor did not need a translator in order to participate in the second 2004 exam. The Court finds further that Mr. Watson did not ask Ms. Going to provide a translator before the scheduled date of the second exam. If such a demand had been made, it is likely that it would have been confirmed in writing before the exam, not by letter dated weeks later. Moreover, even if Mr. Watson had timely asked for a translator, the Court Order setting the 2004 exam still required the Debtor to appear. And, finally, Mr. Watson concedes that he did not know whether Ms. Going would have a translator present at the exam; he just decided he and the Debtor would not appear. The Court finds that language was not the reason for the non-appearance -- Mr. Watson and the Debtor did not appear because Ms. Going had refused to pay Mr. Watson's contingency fee out of the insurance check.

Mr. Watson may well have had an argument that would have supported some compensation if certain steps had been taken or procedures followed. The route that he took, however, is not one contemplated by the Bankruptcy Code or Rules. The Court concludes that the statements made by Mr. Watson to the Court that the Debtor did not appear at the 2004 examination because he needed a Romanian translator violate Bankruptcy Rule 9011 because they were untrue (both because the Debtor does speak English and because that was not the reason he failed to appear) and because the statements were made for an improper purpose, including causing delay and increasing expense to other parties in order to pressure those parties to pay his legal fees.

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Bankruptcy Rule 9011 provides that a sanction shall be limited to what is sufficient to deter repetition of such conduct. Fed. R. Bankr. P. 9011 (c)(2). Mr. Watson asks in mitigation that the Court consider that the majority of his practice is in state court and other federal courts, thus excusing or explaining a lack of familiarity with bankruptcy law.⁵ He also argues that he generally appears in the bankruptcy court not as a debtor's counsel but instead representing other parties in interest. With respect to the first point, a lawyer who appears in bankruptcy court is expected to have an adequate understanding of the applicable substantive and procedural law; a lawyer who does not, has a professional obligation to refer the matter to other counsel. Despite that, the Court recognizes that there are instances in which arcane provisions prove to be a trap for the unwary; this is not, however, one of those instances. Instead, Bankruptcy Rule 9011 is straightforward in the duty that it imposes on counsel, derives directly from Federal Rule of Civil Procedure 11, and is similar in tone and spirit to its Ohio counterpart. As a result, a practitioner in Ohio state courts or other federal courts should be familiar with the obligations imposed by those rules and able to follow the bankruptcy equivalent with little difficulty. On the second point, the nature of a representation does not change a lawyer's obligations under the Bankruptcy Code and Rules.

After considering all of the circumstances, the Court finds that the appropriate sanction is for Mr. Watson to compensate other counsel involved in this matter for their time and expenses, as well as to reimburse the Clerk's office for the cost of the April 27, 2000 hearing transcript. Both Mr. Baker and Ms. Going filed affidavits establishing their fees and costs. (Docket 57, 58). Mr. Watson had an opportunity to object to those fees and did not. He is, therefore, ordered to pay \$1,078.35 to Weltman, Weinberg & Reis Co., L.P.A. in care of Kristin Going and \$562.50 to

⁵ Mr. Watson has made this argument in other matters before this Court.

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Adam Baker on or before 15 days after the date on which this order is entered and is to file a notice confirming that the payment has been made. The transcript cost is \$320.00. Mr. Watson has not had the opportunity to object to that cost and so he is further ordered to pay this amount to the Clerk of the United States Bankruptcy Court, Northern District of Ohio, on or before 15 days after the date on which this Order is entered, and is to file a notice confirming payment, unless on or before 10 days after the date on which this Order is entered he requests a hearing with respect to that cost.

The remaining issue is the Show Cause Order on the Debtor. The Debtor admitted receiving the 2004 Order and failing to appear. The Debtor has now, however, endorsed the check over to the Chapter 7 Trustee, which was the point of the scheduled examination. Also, the most likely reason why the Debtor did not appear is because Mr. Watson told him he did not have to do so. Under the circumstances, the Court finds that there is insufficient evidence that the Debtor's conduct was willful, that the Debtor has in fact complied with his obligation to turn the insurance proceeds over to the Chapter 7 Trustee, and that the Show Cause Order on the Debtor should be, and is, concluded.

IT IS SO ORDERED.

Date: 14 July 2000

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Michael Goins, Esq.
Michael Troy Watson, Esq.
Virgil E. Brown, Jr., Trustee
Kristin Going, Esq.
Adam Baker, Esq.
Lenore Kleinman, Esq.

By: Joyce L. Gordon, Secretary
Date: 7/14/2000