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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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UNITED STATES COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-14324
)
RHONDA RUFF-QUEEN,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

The United States trustee (“UST”) moves for an order holding petition preparer Ronald Smedley in civil contempt for failing to comply with a judgment that directed him to turn over to the chapter 7 trustee payments he received from the debtor. (Docket 29). Mr. Smedley did not file any formal opposition, but he opposes the request and has asked that the payment be reduced. (Docket 42).¹ The court held hearings on the motion on August 14, 2003 and September 4, 2003.

I. JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

II. CONTEMPT

Contempt sanctions “may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard.” *International Union, United Mine Workers of Am. v. Bagwell*, 512

¹ The court has treated the filing as a response to the UST’s motion. To the extent that Mr. Smedley intended it to be a separate motion, it is denied for the reasons stated in this memorandum of opinion.

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U.S. 821, 827 (1994).² In addressing a contempt request, a court must consider three issues: (1) did the respondent receive appropriate notice of the alleged contempt; (2) did the acts or failures to act constitute contempt of court; and (3) if so, what is the appropriate consequence.

The primary purpose of civil contempt:

is to ‘compel obedience to a court order and compensate for injuries caused by non-compliance’.” *McMahan & Co. v. Po Folks, Inc.*, 206 F.3d 627, 634 (6th Cir. 2000) (quoting *TWM Manuf. Co. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983)). “Compensatory contempt orders compensate the party harmed by the other party’s contemptuous actions; coercive orders seek to cajole the party in contempt to act in the manner desired by the court.” *Consolidated Rail Corp. v. Yashinsky*, 170 F.3d 591, 595 (6th Cir. 1999).

In re Walker, 257 B.R.493, 497 (Bankr. N.D. Ohio 2001) (footnote omitted).

The UST has the burden of proving by clear and convincing evidence that Mr. Smedley violated a specific and definite order that required him to act or refrain from acting, with knowledge of that order. *In re Walker*, 257 B.R. at 497 (citing *Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 720 (6th Cir. 1996)). Mr. Smedley can successfully defend by establishing that he is unable to comply with the order. *Id.* (citing *Glover v. Johnson*, 138 F.3d 229 (6th Cir. 1998)). The inability to comply must be established categorically and in detail. *Electrical Workers Pension Trust Fund of Local Union #58 v. Gary’s Electrical Serv. Co.*, 340 F.3d 373, 379 (6th Cir. 2003); *Rolex Watch U.S.A., Inc.*, 74 F.3d 716, 720 (6th Cir. 1996).

² Under Bankruptcy Rule 9020, contempt proceedings are governed by Bankruptcy Rule 9014. See FED. R. BANKR. P. 9020 and FED. R. BANKR. P. 9014.

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III. FACTS

A. The June 25, 2003 Judgment

Ronald Smedley served as the petition preparer for Rhonda Ruff-Queen when she filed her bankruptcy case. The UST requested that Mr. Smedley be required to return the \$249.00 paid by the debtor because he overstepped the bounds of appropriate activity for a petition preparer and engaged in the unauthorized practice of law. Concluding that was the case, the court entered judgment on June 25, 2003 requiring Mr. Smedley to turn over the fees to the chapter 7 trustee (the Judgment). (Docket 25, 26).

B. Mr. Smedley's Response to the Judgment

Mr. Smedley filed a motion to reconsider the Judgment in which he stated that he would pay the money to the trustee but wanted to state his position for "informational/proffer purposes only." The court denied the motion on July 14, 2003 because it did not seek to alter or amend the Judgment. (Docket 33). Mr. Smedley then moved for relief from judgment. His motion failed to meet the requirements for such relief and it was denied. (Docket 38, 39).

C. The Contempt Proceedings

The UST's contempt request was first heard on August 14, 2003. Mr. Smedley appeared at that time, acknowledged he had received the Judgment, and admitted he had not made the required payment. He said he would do so by September 1, 2003. He also stated that he had appealed the Judgment, although the case docket does not support that.

After inquiring how much time Mr. Smedley needed to make the payment, the court adjourned the hearing to September 4, 2003 on the understanding that Mr. Smedley would make the payment by September 1, 2003. Mr. Smedley was instructed to file a notice that he had made

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the payment. The court advised him that this matter would be concluded if the payment was made, but that a failure to make the payment would be viewed as willful.

On August 29, 2003 Mr. Smedley filed a “Motion to Reduce Fines and Penalties.”³ (Docket 42). In it, he argues that the required payment is unreasonable and requests an unspecified reduction. Alternatively, he asks to be allowed to make installment payments. The linchpin of the motion is Mr. Smedley’s assertion that he cannot make the payment because he is unemployed and disabled. He attaches an affidavit, but it says very little that is helpful. The verification of income he refers to is not attached and the affidavit is contradictory, stating both that he is unemployed and also that he types petitions for debtors. Additionally, he avers that he receives approximately \$20.00 per debtor, when in the cases that have been before this court his charges are significantly higher.

Mr. Smedley did not file the required payment notice and so the adjourned contempt hearing went forward on September 4, 2003. Mr. Smedley did not appear. The UST reported that the \$249.00 payment had not been made to the Chapter 7 trustee.

D. Mr. Smedley’s Contempt

Mr. Smedley had notice of the contempt hearing and participated in the first hearing. He had an opportunity to be heard at both hearings. The terms of the Judgment are definite and specific and require Mr. Smedley to turn over \$249.00 to the Chapter 7 trustee. It is undisputed that Mr. Smedley has knowledge of the Judgment and has not complied with it despite the promise he made to do so at the August 14th hearing.

³ This motion requests relief in five unrelated cases. Two of those cases are assigned to another judge.

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Mr. Smedley asserts that he is unable to make the payment. The inability to comply with a court order is a valid defense, however, it must be established “categorically and in detail.” Mr. Smedley’s unsupported statement that he is unable to pay fails to meet that standard, particularly in light of his statement that he could pay if given until September 1, 2003. Also, the affidavit which he has provided suffers from the deficiencies noted above. The payment required by the Judgment is relatively small and Mr. Smedley has failed to establish that he is unable (rather than unwilling) to make it. The UST has, therefore, proven that Mr. Smedley is in contempt of court for his failure to comply with the Judgment.

E. The Contempt Sanction

The remaining issue is the appropriate consequence of Mr. Smedley’s contempt:

In keeping with the two purposes of civil contempt, there are two kinds of civil fines that may be imposed. One kind is intended to compensate for damages caused by the contemnor’s noncompliance. A fine of this kind must be based on evidence of actual loss. *United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391 (6th Cir. 1991). The second kind of fine is “payable to the court, but the [contemnor] can avoid paying the ‘fine’ by performing the act required by the court’s order’.” *Id.* at 1400 (quoting *Roe v. Operation Rescue*, 919 F.2d 857, 868 (3d Cir. 1990)). To determine what monetary sanctions are appropriate, “[t]he magnitude of the sanctions imposed should be assessed by weighing the harm caused by noncompliance, ‘and the probable effectiveness of any suggested sanction in bringing about the result desired’.” *Glover v. Johnson*, 199 F.3d 310, 312 (6th Cir. 1999) (quoting *United States v. United Mine Workers*, 330 U.S. 258, 304 (1947)).

In re Walker, 257 B.R. at 498.

The UST asks that a fine be imposed as a sanction. A coercive per diem fine is appropriate under the circumstances to encourage Mr. Smedley to comply with the Judgment. *Id.*

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at 498. The totality of the circumstances must be considered in determining the amount of the fine, including these factors:

1. The type of actions that led to the issuance of the [Judgment], and the consequences of non-compliance with the [Judgment];
2. The reasons advanced by [Mr. Smedley] for non-compliance with the [Judgment] . . . and any good faith issues, even if [that] factor[] [does] not serve as a defense to the contempt charge;
3. Whether [Mr. Smedley] expresses an intention to promptly comply with the [Judgment];
4. The amount of time that has elapsed since the [Judgment] was entered; and
5. [Mr. Smedley's] financial circumstances.

Id. (footnote omitted).

More than two months have passed since Mr. Smedley was ordered to pay \$249.00 to the chapter 7 trustee and it has been over a month since his motion for relief from the Judgment was denied. After telling the court that he would pay the Judgment by September 1, Mr. Smedley failed to do so and failed to attend the resulting court hearing. Mr. Smedley claims that he is unemployed and disabled; when given the opportunity to prove his inability to pay, however, he failed to do so. Under these circumstances, a daily fine in the amount of \$25.00 is appropriate to make Mr. Smedley reconsider his failure to comply with the Judgment.

IV. CONCLUSION

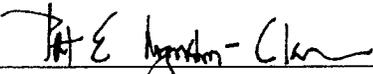
For the reasons stated, the Court finds that Ronald Smedley is in contempt of court because he has failed to comply with the Judgment which required him to pay \$249.00 to the

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chapter 7 trustee. Mr. Smedley is required to pay a fine to the Clerk of the Bankruptcy Court in the amount of \$25.00 for each day that he fails to make the required payment. This fine will be imposed starting on the tenth day after the date on which this order is entered, unless within that time Mr. Smedley pays \$249.00 to the chapter 7 trustee.

A separate order will be issued reflecting this decision.

Date: 16 Sept 2003


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Richard Baumgart, Trustee
Mary Ann Rabin, Esq.

By: Joyce L. Gordon, Secretary

Date: 9/16/03

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CLEVELAND

In re:) Case No. 03-14324
)
RHONDA RUFF-QUEEN,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, Ronald Smedley's motion to reduce fines and penalties is denied. (Docket 42).

IT IS SO ORDERED.

Date: 16 Sept 2003

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

Served by mail on: Dean Wyman, Esq.
Mr. Ronald Smedley
Mary Ann Rabin, Esq
Richard Baumgart, Trustee

By: Joyce L. Gordon Secretary

Date: 9/16/03

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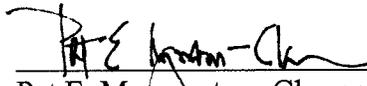
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RHONDA RUFF-QUEEN,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the motion of the United States trustee for an order holding Ronald Smedley in civil contempt is granted because Mr. Smedley failed to comply with the judgment entered June 25, 2003 and did not establish his defense to compliance. (Docket 29).

As a sanction for the contempt, Mr. Smedley is required to pay a fine to the Clerk of the Bankruptcy Court in the amount of \$25.00 for each day going forward that he fails to make the payments called for by the judgment. This fine will be imposed starting on the tenth day after the date on which this order is entered, unless within that time Mr. Smedley complies with the terms of the judgment.

IT IS SO ORDERED.

Date: 16 September 2003


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Dean Wyman Esq.
Mr. Ronald Smedley
Mary Ann Rabin, Esq.
Richard Baumgart, Trustee

By: Joyce L. Gordon, Secretary
Date: 9/16/03