

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
JULY 9 2004  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 03-14264  
)  
LENORA F. JOHNSON, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**  
) **FINDING TONIA SCALES-ASOYE**  
) **IN CIVIL CONTEMPT AND**  
) **IMPOSING SANCTIONS**

On motion of the United States trustee (UST), the Court ordered Tonia Scales-Asoye to pay a fine and refund fees to the debtor. (Docket 15). The UST now asks that Ms. Scales-Asoye be found in civil contempt for her failure to comply with that order. (Docket 38, 40). The Court held a hearing on this issue on February 4, 2004. Ms. Scales-Asoye had notice of the hearing, but did not appear. Counsel for the UST presented her case through the testimony of debtor Lenora Johnson and exhibits.

**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).

**DISCUSSION**

**A. The Order to Refund Fees and Pay Fine**

After notice to Ms. Scales-Asoye and a hearing at which she did not appear, the court found that Ms. Scales-Asoye was a bankruptcy petition preparer who failed to comply with the requirements of 11 U.S.C. § 110. The Court entered an order on June 20, 2003 which required

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION

Ms. Scales-Asoye to (1) refund \$300.00 in fees to the debtor; and (2) pay a \$500.00 fine to the clerk of the bankruptcy court (the Order). (Docket 15). Ms. Scales-Asoye filed a motion to vacate the Order which was denied by an order entered on July 29, 2003. Ms. Scales-Asoye has not paid the \$500.00 fine and has not refunded the fees to the debtor. This motion to hold Ms. Scales-Asoye in civil contempt of court was then filed.

**B. 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 U.S. 821, 827 (1994).<sup>1</sup> 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 Ms. Scales-Asoye violated a specific and definite order that required her 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.*

---

<sup>1</sup> Under bankruptcy rule 9020, contempt proceedings are governed by bankruptcy rule 9014. See FED. R. BANKR. P. 9020 and FED. R. BANKR. P. 9014.

**THIS OPINION IS NOT INTENDED  
FOR PUBLICATION**

*Crowley*, 74 F.3d 716, 720 (6th Cir. 1996)). Ms. Scales-Asoye can successfully defend by establishing that she 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. v. Crowley*, 74 F.3d 716, 720 (6th Cir. 1996).

Ms. Scales-Asoye was served with the UST's motion and given appropriate notice of the contempt issue. The terms of the Order are definite and specific and require Ms. Scales-Asoye to refund fees in the amount of \$300.00 to Ms. Johnson and to pay a \$500.00 fine to the clerk of the bankruptcy court. It is clear that Ms. Scales-Asoye has knowledge of the Order based on her request that it be vacated. That request was denied on July 29, 2003 in part because Ms. Scales-Asoye did not appear to prosecute it. Six months have passed since that denial and she has not made any attempt to comply with the Order. Ms. Scales-Asoye has not shown that she is unable to comply with the Order.

The UST has, therefore, proven that Ms. Scales-Asoye is in contempt of court for her failure to comply with the Order.

**C. The Contempt Sanction**

The remaining issue is the appropriate consequence of Ms. Scales-Asoye'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 non-compliance. 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

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION

magnitude of the sanctions imposed should be assessed by weighing the harm caused by non-compliance, '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 Ms. Scales-Asoye's compliance with the Order. *Id.* 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 [Order], and the consequences of non-compliance with the [Order];
2. The reasons advanced by for non-compliance with the [Order] . . . and any good faith issues, even if [that] factor[ ] [does] not serve as a defense to the contempt charge;
3. Whether [Ms. Scales-Asoye] expresses an intention to promptly comply with the [Order];
4. The amount of time that has elapsed since the [Order] was entered; and
5. [Ms. Scales-Asoye's] financial circumstances.

*Id.* (footnote omitted).

Ms. Scales-Asoye failed to comply with the § 110 provisions for petition preparers. More than six months have passed since she was ordered to refund fees to Ms. Johnson and to pay the \$500.00 fine based on that non-compliance. Ms. Scales-Asoye did not appear at the contempt hearing and has not provided any information as to her finances. Under these circumstances, a daily fine in the amount of \$10.00 is appropriate to make Ms. Scales-Asoye reconsider her failure to comply with the Order.

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION

CONCLUSION

For the reasons stated, the court finds that Tonia Scales-Asoye is in contempt of court because she has failed to comply with the Order which required her to pay a \$500.00 fine to the clerk of court and which required her to refund fees in the amount of \$300.00 to the debtor. Ms Scales-Asoye is required to pay a fine to the clerk of the bankruptcy court in the amount of \$10.00 for each day that she continues to fail to make the required payments. This fine will be imposed starting on the tenth day after the date on which this order is entered, unless within that time Ms. Scales-Asoye makes the required payments and files evidence of so doing with the clerk of court.

A separate order will be issued reflecting this decision.

Date:

9 July 2004



Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Linda Battisti, Esq.  
Robert Wentz, Esq.  
Ms. Tonia Scales-Asoye

By:

Joyce L. Gordon, Secretary

Date:

2/9/04

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION  
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

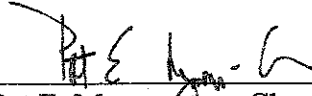
FILED  
JUL 9 2004  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 03-14264  
)  
LENORA F. JOHNSON, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the United States trustee's motion to find Tonia Scales-Asoye in civil contempt is granted. (Docket 38, 40).

IT IS, THEREFORE, ORDERED that Tonia Scales-Asoye is adjudged to be in civil contempt of this court because she failed to comply with the terms of the June 20, 2003 order that required her to refund \$300.00 in fees to the debtor and to pay a \$500.00 fine. She is now required to pay an additional fine in the amount of \$10.00 for each day that she fails to pay those amounts. The additional fine will be imposed starting on the tenth day after the date on which this order is entered, unless within that time period Ms. Scales-Asoye refunds fees in the amount of \$300.00 to the debtor (filing evidence of such payment with the court) and pays the original \$500.00 fine to the clerk of the United States Bankruptcy Court for the Northern District of Ohio at Cleveland.

Date: 9 July 2004

  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Linda Battisti, Esq.  
Robert Wentz, Esq.  
Ms. Tonia Scales-Asoye

By: Joyce R. Gordon, Secretary  
Date: 2/9/04