

**THIS OPINION IS NOT INTENDED
FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Case No. 04-20968
)	
BRENDA L. MITCHELL,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
)	
)	<u>MEMORANDUM OF OPINION</u>

Isabel Carter-Richmond served as a petition preparer in this case. The court issued an order requiring Ms. Carter-Richmond to appear and show cause why she did not file a disclosure of compensation. Ms. Carter-Richmond failed to appear and the United States Trustee asks that she be found to be in contempt based on that failure. (Docket 19). For the reasons stated below, the United States trustee's motion is granted and Ms. Carter-Richmond is found to be in contempt of court.

JURISDICTION

The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 84 entered 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).

FACTS AND DISCUSSION

This chapter 7 case was filed on August 26, 2004. The issue of contempt arises out of Isabel Carter-Richmond's failure to appear in response to a court order entered on September 8, 2004 (the show cause order) which required her to appear on September 30, 2004 to explain her failure to file the disclosure of compensation required by 11 U.S.C. § 110(h)(1). Ms. Carter-

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Richmond failed to appear on September 30, 2004 and the court referred the matter to the United States trustee.

The United States trustee now asks the court to find Ms. Carter-Richmond in contempt based on her failure to appear and to provide an explanation for her failure to file the disclosure of compensation.¹ This matter was heard on December 2, 2004. Linda Battisti appeared for the United States trustee. Ms. Carter-Richmond did not appear.

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.*

Based on the undisputed facts, Ms. Carter-Richmond is in contempt of the show cause order. Ms. Carter-Richmond was served with and had knowledge of the order. The terms of the order were specific and required Ms. Carter-Richmond to appear on September 30, 2004 to explain why she had not filed a disclosure of compensation. Ms. Carter-Richmond failed to appear on September 30, 2004. Additionally, she failed to appear on December 2, 2004 in response to the United States trustee's motion.

¹ Ms. Carter-Richmond subsequently filed a disclosure of compensation on September 16, 2004.

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These facts clearly and convincingly establish that Ms. Carter-Richmond had knowledge of the court's show cause order and failed to comply with it. Ms. Carter-Richmond was given adequate notice and an opportunity to be heard on the contempt issue, yet she failed to appear and has not provided any explanation for this failure. The court finds, therefore, that Isabel Carter-Richmond is in contempt based on her failure to comply with the show cause order.

The next issue is the appropriate consequence for the contempt. A coercive per diem fine is appropriate under the circumstances to encourage Ms. Carter-Richmond's compliance with the September 8, 2004 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 [show cause order], and the consequences of non-compliance with the [show cause order];
2. The reasons advanced . . . for non-compliance with the [show cause order] . . . and any good faith issues, even if those factors do not serve as a defense to the contempt charge;
3. Whether [Ms. Carter-Richmond] expresses an intention to promptly comply with the [show cause order];
4. The amount of time that has elapsed since the [show cause order] was entered; and
5. [Ms. Carter-Richmond's] financial circumstances.

Id. (footnote omitted).

Ms. Carter-Richmond was ordered to appear almost three months ago. She failed to comply with the court's show cause order and she failed to appear at the hearing on the United States trustee's motion for a finding of contempt. Under these circumstances, a daily fine in the

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amount of \$10.00 is appropriate to make Ms. Carter Richmond reconsider her failure to comply with the court's order.

CONCLUSION

For the reasons stated, the United States trustee's motion is granted and Isabel Carter-Richmond is found to be in civil contempt based on her failure to appear in response to this court's September 8, 2004 show cause order. Ms. Carter-Richmond may file a request for a hearing for the purpose of explaining her failure to appear on September 30, 2004 within ten days after the entry of this memorandum of opinion and the accompanying order. In the event she fails to make that request, a fine in the amount of \$10.00 a day is imposed for each additional day that she fails to make that request. The fine is to be paid to the Clerk's Office of the United States Bankruptcy Court at Cleveland.

A separate order will be entered reflecting this decision.

Date: 10 June 2004

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

To be served by clerk's office email and by the Bankruptcy Noticing Center on:

Ms. Isabel Carter-Richmond
Linda Battisti, Esq.

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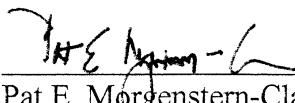
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:) Case No. 04-20968
)
BRENDA L. MITCHELL,) 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 for a finding of contempt is granted and Isabel Carter-Richmond is found to be in civil contempt based on her failure to appear in response to this court's September 8, 2004 show cause order. (Docket 19). Ms. Carter-Richmond may file a request for a hearing for the purpose of explaining her failure to appear on September 30, 2004 within ten days after the entry of this order. In the event she fails to make that request, a fine in the amount of \$10.00 a day is imposed for each additional day that she fails to make that request. The fine is to be paid to the Clerk's Office of the United States Bankruptcy Court at Cleveland.

IT IS SO ORDERED.

Date: 20 Nov 2004



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and by the Bankruptcy Noticing Center on:

Ms. Isabel Carter-Richmond
Linda Battisti, Esq.