

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 03-24769
)	
JIMMY L. KINCAID,)	Chapter 13
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
)	
)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER FINDING AMY SHIEK</u>
)	<u>IN CONTEMPT, AND SETTING</u>
)	<u>HEARING TO DETERMINE</u>
)	<u>SANCTIONS</u>

This court entered an order requiring Amy Shiek and others to appear and show cause regarding a series of filings made in this case related to proofs of claim. When Ms. Shiek failed to appear, the court ordered her to appear and explain why she should not be held in contempt. Ms. Shiek again failed to appear. For the reasons stated below, Ms. Shiek is found to be in civil contempt.

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

Amy Shiek was ordered to appear on July 21, 2009 to address the court's concern that proofs of claim and related filings had been made without standing to do so (the order to

appear).¹ (Docket 89). Ms. Shiek did not appear on July 21, 2009 and was ordered to appear on August 11, 2009 to show cause why she should not be held in contempt for her failure to appear in response to the court's order. (Docket 94). Ms. Shiek failed to appear on August 11, 2009. The court, therefore, considers whether Ms. Shiek is in contempt of the order to 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 facts, Amy Shiek is in contempt of this court's order to appear. The docket shows that Ms. Shiek was served with the order to appear. The terms of the order were specific, requiring her to appear on July 21, 2009 to address the court's concerns regarding the filings made in this case. Ms. Shiek did not appear on July 21, 2009 in response to the order to appear. She also failed to appear on August 11, 2009 to explain why.

These facts show clearly and convincingly that Ms. Shiek had knowledge of the order to appear and failed to comply with it. She 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 her

¹ The events and filings leading up to the entry of the order to appear are stated in the order and need not be repeated here.


failure to comply with the court's order. The court, therefore, finds that Ms. Shiek is in contempt based on her failure to comply with the order to appear.

The remaining issue is the appropriate consequence of Ms. Shiek's contempt. Civil contempt is generally used either to compensate a party that has been injured by the contempt or to coerce an individual into obeying the court's order. *Id.* at 498. At this juncture, the court must determine what sanction, monetary or otherwise, should be imposed to encourage Ms. Shiek to comply with the court's order.

CONCLUSION

For the reasons stated, Amy Shiek is found to be in civil contempt based on her failure to comply with the order to appear. A hearing will be held on **September 23, 2009** at 8:30 a.m. in Courtroom #2A, U.S. Bankruptcy Court, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio to determine the appropriate sanction for Ms. Shiek's contempt.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by the clerk's office by regular U.S. mail, postage prepaid, on:
Ms. Amy Shiek, President, Vativ Recovery Solutions LLC, 1 Sugar Creek Center Blvd.,
Sugar Land, TX 77478; and P.O. Box 19249, Sugar Land, TX 77496
Ms. Amy Shiek, 7293 Quinn Avenue, South Haven, MN 55382-3831
Ms. Amy Shiek, c/o The Bay Club, 12635 Bayview Road, South Haven, MN 55382