
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No: 11-cv-00574 MJD/FLN

Plaintiff(s)

v.

JASON BO-ALAN BECKMAN and
THE OXFORD PRIVATE CLIENT
GROUP, LLC,

Defendant(s)

And

HOLLIE BECKMAN,

Relief Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF RECEIVER'S MOTION
FOR AN ORDER FOR A RULE TO SHOW CAUSE AGAINST SEVERAL
FINANCIAL INSTITUTIONS**

The Receiver, R.J. Zayed, has moved the Court for an Order for a Rule to Show Cause Against Bank of America, N.A., JPMorgan Chase Bank, N.A., American Express, and UBS Financial Services Inc. as to why they should not be held in contempt for violation of this Court's Orders, and for an award of attorneys' fees.

FACTS

A. The Court's Receivership and Asset Freeze Orders

These cases concern a \$190 million Ponzi scheme run by Trevor Cook and others. On November 23, 2009, the Court appointed R.J. Zayed as Receiver over Trevor Cook, Patrick Kiley, and various entities under their control. *See Order Appointing Receiver*, No. 09-cv-3333, Document No. 13 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No. 18 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68 (Dec. 11, 2009); *Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14 (November 23, 2009); *Order Identifying Frozen Accounts*, SEC Docket No. 15 (November 23, 2009); *Ex Parte Statutory Restraining Order*, No. 09-cv-3332, Document No. 21 (November 23, 2009); *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96 (Dec. 11, 2009).

On March 8, 2011, this Court entered an order appointing R.J. Zayed as Receiver over the estates of Jason Bo-Alan Beckman, The Oxford Private Client Group, LLC, and all funds, accounts, and other assets held by or for the benefit of Relief-Defendant Hollie Beckman. *Order Appointing Receiver*, No. 11-cv-574 (“SEC” case), Doc. No. 10, at 1-2 (Mar. 8, 2011); *see also Order Imposing Asset Freeze and Other Ancillary Relief and Setting Hearing on Motion for Preliminary Injunction*, SEC Docket No. 9 (Mar. 8, 2011) (hereafter, collectively, the “Receiver Orders”). “The investors and issues in the Beckman Receivership are all part of the Cook Receivership and accordingly, these two Receiverships [are] managed together and treated as one.” *Eighth Status Report of*

Receiver R.J. Zayed in CFTC v. COOK, et al. (09-cv-3332) AND SEC v. COOK, et al. (09-cv-3333), No. 09-cv-3333, Document No. 733, § J (Apr. 7, 2011).

The Receiver is charged with locating and preserving all assets that remain from the scheme for the benefit of over 1,000 investors who were defrauded by Cook and his colleagues – which includes Bo Beckman. In doing so, the Receiver is authorized to, among other things, “take such action as necessary and appropriate to prevent the dissipation or concealment of any funds or assets or for the preservation of any such funds and assets of the Receiver Estates.” *Order Appointing Receiver*, SEC Docket No. 10, § I.G.

The Court’s Orders provide clear instructions to anyone in possession of Receivership assets. All assets of the Defendants and Relief Defendants are frozen, including “all other funds, accounts, and other assets to which proceeds from the Defendants’ violations can be traced or which were acquired with proceeds of the Defendants’ violations.” *Order Imposing Asset Freeze and Other Ancillary Relief and Setting Hearing on Motion for Preliminary Injunction*, SEC Docket No. 9, § I. All persons in possession of Receivership assets or records are ordered to turn over to the Receiver “any and all property of any nature, including but not limited to all real and personal property; businesses; accounts; documents, electronically stored information, and tangible things . . . and any other asset of any kind of which any of the Receiver Estates are the owners or have an interest in immediately upon receiving notice of the entry of this Order.” *Order Appointing Receiver*, SEC Docket 10, § IX.

In addition, anyone holding or controlling Receivership assets is prohibited from disposing of or taking any action that interferes with “the taking control, possession, or management, by the Receiver, of any assets of the Receiver Estates, or . . . interfere[s] with or harass the Receiver, or . . . interfere[s] in any manner with the exclusive jurisdiction of this Court over the Receiver Estates.” *Order Appointing Receiver*, SEC Docket No. 10, § VII.D. *See also Second Amended Order Appointing Receiver*, No. 09-cv-3333, Docket No. 68, § VII.D.; *see also Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14, at 8; *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21, § I.A.

B. The Financial Institutions Have Flagrantly Ignored This Court’s Orders and the Receiver’s Requests

As a function of his investigation into the Beckman scheme, the Receiver served subpoenas and the Receiver Orders on Bank of America, N.A.; JPMorgan Chase Bank, N.A.; American Express Co.; and UBS Financial Services (Orders only) (collectively, the “Financial Institutions”) immediately following the Court’s March 8, 2011 Order. *See Declaration of Brian W. Hayes in Support of Receiver’s Motion for an Order for a Rule to Show Cause against Several Financial Institutions* (Apr. 8, 2011) [hereafter, “Hayes Decl.”]. To date, none of these institutions have complied with the Receiver’s requests (for past account information and access going forward) or this Court’s Orders.

The Hayes Declaration details in full the Receiver’s frustratingly long and unfruitful attempts to get simple financial information pertinent to his administration of the Receiver Estates. For example, the Receiver has communicated with Bank of

America approximately eighteen (18) times since March 8, 2011 for purposes of gaining access to the Beckman mortgage and credit card accounts. (Hayes Decl. ¶¶ 4-22, Exs. A-L) Despite these efforts, the Receiver has yet to receive a fully adequate response from Bank of America. (*Id.* ¶ 22) The Receiver has corresponded with JPMorgan Chase approximately twelve (12) times for similar purposes. (*Id.* ¶¶ 27-39, Exs. P-U) Yet JPMorgan Chase has not responded appropriately to the Receiver's requests. (*Id.* ¶ 39) American Express did respond by letter, after being served with a subpoena, but merely stated they were looking in to the matter. (*Id.* ¶ 25, Ex. O; *see also id.* ¶¶ 23-25, Exs. M-N) No extension was requested by American Express, and the response deadline has long since passed. (*Id.* ¶ O) As to UBS Financial Services, the Receiver has been requesting information from this company for nearly a year to no avail. (*Id.* ¶¶ 40-48; Exs. V-Y)

Myriad emails, telephone calls, letters and service of this Court's Orders – to all of the Financial Institutions – have not produced compliance. (*Id.*) These institutions continue to act as if a Court Order and a subpoena are a standard customer query, subject to the whims of their bureaucratic processes.

ARGUMENT

The Court has inherent authority to enforce compliance with its own orders. *Shillitani v. United States*, 384 U.S. 364, 370 (1966). This may be done through civil contempt proceedings. *In re Long Visitor*, 523 F.2d 443, 448 (8th Cir. 1975) (citing *Shillitani v. United States*, 384 U.S. 364 (1966)).

A. Civil Contempt Proceedings

Civil contempt proceedings are authorized by 18 U.S.C. § 401(3) which states, in pertinent part, that “[a] court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as ... [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command.” The purpose of a civil contempt proceeding is wholly remedial and is intended to either coerce compliance with a prior court order or compensate for losses suffered as a result of non-compliance with that order. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949); *Commodity Futures Trading Commission v. Premex, Inc.*, 655 F.2d 779, 785 (7th Cir. 1981).

In a civil contempt proceeding, the moving party must prove, by clear and convincing evidence, that the respondent has violated the court’s order. *McComb*, 336 U.S. at 191; *NLRB v. Ralph Printing & Lithography Co.*, 433 F.2d 1058, 1062 (8th Cir. 1970). To make a *prima facie* showing of contempt the movant need only prove that a respondent has failed to comply with a valid court order. *Heinold Hog Market, Inc. v. McCoy*, 700 F.2d 611, 615 (10th Cir. 1983). A district court does not have to find that the violation was “willful” or intentional. *McComb*, 336 U.S. at 191; *United States v. Ofe*, 572 F.2d 656 (8th Cir. 1978); *Faegre & Benson, LLP v. Purdy*, 367 F.Supp.2d 1238, 1243 (D. Minn. 2005). In civil contempt proceedings, the issue is compliance with the order, not intent to violate it. *In re General Motors Corp.*, 61 F. 3d 256, 258 (4th Cir. 1995); *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984). As stated by the United States Supreme Court:

The absence of willfulness does not relieve from civil contempt Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act. The decree was not fashioned so as to grant or withhold its benefits dependent on the state of minds of respondents. . . . An act does not cease to be a violation of a law and a decree merely because it may have been done innocently.

McComb, 336 U.S. at 191. Nor does reliance on the advice of counsel excuse non-compliance with an order that is, in fact, lawful. *United States v. Asay*, 614 F.2d 655, 661 (9th Cir. 1980).

Once a *prima facie* case has been shown, the burden shifts to the respondent to come forward with evidence showing categorically and in detail why he or she was unable to comply with court orders. *United States v. Rylander*, 460 U.S. 752, 755, 757 (1983) *reh. denied*, 462 U.S. 1112 (1983); *Chicago Truck Drivers v. Brotherhood Labor Leasing*, 207 F.3d 500, 505 (8th Cir. 2000). Further, if the respondent is responsible for an inability to comply, such a defense is unavailable. *United States v. Bryan*, 339 U.S. 323, 330-32 (1950); *U.S. v. Seetapun*, 750 F.2d 601, 605 (7th Cir. Ill. 1984). Good faith on the part of the respondent does not constitute a defense. *Donovan*, 716 F.2d at 1240.

The Court “has broad discretion in using its contempt power to require adherence to court orders. *O’Conner v. Midwest Pipe Fabricators, Inc.*, 972 F.2d 1204, 1209 (10th Cir. 1992), citing *United States v. Riewe*, 676 F.2d 418 (10th Cir. 1982). Judicial sanctions in civil contempt proceedings may be employed for either or both of two purposes: 1) to compensate the complainant for losses sustained; and 2) to coerce the contemnor into compliance with the court’s order. *United States v. United Mine*

Workers, 330 U.S. 258, 303-04 (1947); *Chaganti & Associates, P.C. v. Nowotny*, 470 F.3d 1215, 1225 (8th Cir. 2006).

B. Bank of America, JPMorgan Chase, American Express, and UBS Financial Services Violated This Court's Orders

The Eighth Circuit has held that civil contempt “consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein, or by willfully destroying, removing, concealing, or disposing of the subject-matter of the litigation.” *Dakota Corporation v. Slope County, N.D.*, 75 F. 2d 584, 586 (8th Cir. 1935). The Court’s Order Appointing Receiver in the Beckman action specifically directs all those receiving notice of the Orders to turn over to the Receiver “any and all property of any nature, including but not limited to all real and personal property; businesses; accounts; documents, electronically stored information, and tangible things . . . and any other asset of any kind of which any of the Receiver Estates are the owners or have an interest in immediately upon receiving notice of the entry of this Order.” *Order Appointing Receiver*, SEC Docket 10, at IX.

Further, all persons, including those acting on behalf of any such investor, borrower, creditor are prohibited from doing any act that interferes with “the taking control, possession, or management, by the Receiver, of any assets of the Receiver Estates, . . . interfere[s] with or harass[es] the Receiver, or . . . interfere[s] in any manner with the exclusive jurisdiction of this Court over the Receiver Estates.” *Order Appointing Receiver*, SEC Docket No. 10, § VII.D. *See also Second Amended Order Appointing Receiver*, No. 09-cv-3333, Docket No. 68, § VII.D.; *see also Order Imposing*

Asset Freeze and Other Ancillary Relief, SEC Docket No. 14, at 8; *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21, § I.A.

This Court also expressly granted the Receiver subpoena authority so that he could investigate the trail of money stemming from Beckman's violations, effectively manage seized property, and properly administer the Receiver Estate. *Order Appointing Receiver*, SEC Docket No. 10, § I.H.

Bank of America, JPMorgan Chase, American Express, and UBS Financial Services have all received notice of the Receiver Orders. (Hayes Decl. ¶ 6, 23, 28, 41, Exs. B, M, P, V) Bank of America and Chase have received written authorizations from Bo and Hollie Beckman to add the Receiver's designee to the relevant Beckman accounts. (*Id.* ¶ 12, 29, Exs. F, Q) Bank of America and American Express have been served with a subpoena in this action. (*Id.* ¶¶ 6, 23, Exs. B, M) Yet despite these facts, not one of these entities has complied with either the Court's Orders or a Court issued subpoena. (*See id.*) This noncompliance on both fronts has caused the needless and excessive use of attorney time, and severely hampered the Receiver's ability to properly address his investigation and administer the various properties in his control; and it is contempt on this Court. (*Id.* ¶ 49).

C. The Financial Institutions' Violations Have Hampered the Receiver's Ability to Perform His Duties and Caused Undue Strain on Receiver Resources

By violating the Court's Receivership Orders, the Financial Institutions have unilaterally imposed undue expense and complication on the Receiver's recovery effort.

Over the last few weeks, the Receiver's attorneys have been forced to repeatedly email, call, subpoena, and send correspondence to the Financial Institutions. (Hayes Decl. ¶¶ 4-47, Exs. A-Y) These expenditures of extra time and resources will continue as long as the Receiver remains unable to get the requested financial information. This information is essential for the Receiver because without it, he cannot accurately determine the past flow of money from various persons or entities, accurately address the various needs of the properties currently under his control, or even simply close out dormant accounts. None of these additional resources would have been expended had the Financial Institutions not violated the Court's Orders in the first instance.

This Court's Orders were issued to facilitate recovery of investor money from many individuals and entities. If the Financial Institutions are allowed to continue to disobey the Court's Orders, the Receiver's ability to fulfill his mandate becomes progressively more expensive. Further, the Receiver should not have to bear the burden of repeatedly contacting companies for information – once should be sufficient when an entity is served with a subpoena and/or court order. The Receiver strongly believes it is time to hold these Financial Institutions accountable for their failure to observe the Receiver Orders. Further, the defrauded investors should not have to bear the burden of these companies' continued flouting of the Receiver's efforts.

D. Remedies Sought by the Receiver

The Receiver simply wants the information he has repeatedly requested from the Financial Institutions. But if this Court finds any of the Financial Institutions to be in contempt, the Receiver also requests that this Court require them to pay the Receiver's

attorneys' fees incurred in preparation of the pleadings filed herewith *and* in preparation of all the Receiver's communications regarding his subpoenas and follow-up requests for information. An award of attorneys' fees is an appropriate sanction for civil contempt.

See, e.g., Kehm v. Procter & Gamble Mfg. Co., 724 F.2d 630, 630 (8th Cir. 1984).

Attorneys' fees are especially appropriate in this action, where the Financial Institutions' contemptuous noncompliance has incurred undue expense for the Receiver and reduced the amount of money the Receiver can pay back to the defrauded investors. *See Chicago Truck Drivers v. Bhd. Labor Leasing*, 207 F.3d 500, 505 (8th Cir. 2000) ("Civil contempt may be employed . . . to compensate the complainant for losses sustained[.]").

The Financial Institutions, to date, have behaved as if the Receivership – and this Court's Orders – do not apply to them. They have repeatedly brushed off any and all subpoena deadlines or simple requests for information and continue to operate, business as usual. As the Eighth Circuit has noted, "One of the overarching goals of a court's contempt power is to ensure that litigants do not anoint themselves with the power to adjudge the validity of orders to which they are subject", and that civil contempt may be employed to "coerce the defendant into compliance with a court order". *See Chicago Truck Drivers*, 207 F.3d at 504–05.

CONCLUSION

For all of the forgoing reasons, the Receiver respectfully requests that this Court grant the Receiver's Motion and enter an Order requiring Bank of America, JPMorgan Chase, American Express, and UBS Financial Services to show cause as to why they should not be held in contempt of Court for not responding to Receiver subpoenas and other requests for information.

Dated: April 8, 2011

Respectfully submitted,

s/ Brian W. Hayes

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