

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 EBONY SCOTT et al.,)
)
 Defendants.)

Civil Action No. 4:03-CV-1410-A

ORDER OF CIVIL CONTEMPT AND COERCIVE INCARCERATION

Upon motion by the United States, the court makes the following findings of fact and conclusions of law and enters this Order of Civil Contempt and Coercive Incarceration against defendants Sherri L. Harris (“Harris”), S-N-K Enterprise, Inc. (“S-N-K”), and Kelvin Bailey (“Bailey”).

Findings of Fact

Based on the evidence and filings by the parties, the court finds as follows:

1. On January 21, 2004, the court signed an order and a Final Judgment as to Certain Claims (“January 21 order and judgement”) ordering that, within ten days of service of the order, Harris and S-N-K:

(a) Contact in writing all persons for whom they prepared and/or assisted in the preparation of any federal tax returns or tax-related documents and inform those persons of:

(i) the signing and contents of the court’s order and final judgment as to certain claims;

(ii) the possibility that the United States may seek to recover any erroneous payment those persons may have received; and

(iii) the possibility of the imposition of frivolous-return penalties against those persons;

(b) Provide counsel for the United States all records in their possession, or to which they have access, that identify the names, addresses, and phone numbers of:

(i) all persons or entities, including the taxpayer identification number, to whom Harris and S-N-K gave or sold, directly or indirectly, any materials related to the purported federal grant program for minority-owned businesses;

(ii) all persons or entities, including the taxpayer identification number, for whom Harris and S-N-K or their associates prepared or assisted in preparing any tax return or other tax-related document;

(iii) all persons who assisted in the marketing or preparation of materials used by Harris and S-N-K or written materials sent to potential customers;

(iv) all persons or entities, including the taxpayer identification number, who purchased or used any other tax shelter, plan, or arrangement that Harris and S-N-K have promoted; and

(v) all individuals of whom Harris and S-N-K are aware who currently promote, or within the last five years have promoted, the purported federal grant program for minority-owned businesses promoted by Harris and S-N-K, including all those who have acted as promoters on behalf of S-N-K; and

(c) File sworn certificates certifying that they had complied with these requirements.

2. On January 29, 2004, the court signed an order and a Final Judgment as to Certain Claims (“January 29 order and judgment”) ordering that, within ten days of service of the order,

Bailey:

(a) Contact in writing all persons for whom he prepared and/or assisted in the preparation of any federal tax returns or tax-related documents and inform those persons of:

(i) the signing and contents of the court's order and final judgment as to certain claims;

(ii) the possibility that the United States may seek to recover any erroneous payment those persons may have received; and

(iii) the possibility of the imposition of frivolous-return penalties against those persons;

(b) Provide counsel for the United States all records in his possession, or to which he has access, that identify the names, addresses, and phone numbers of:

(i) all persons or entities, including the taxpayer identification number, to whom Bailey gave or sold, directly or indirectly, any materials related to the purported federal grant program for minority-owned businesses;

(ii) all persons or entities, including the taxpayer identification number, for whom Bailey or his associates prepared or assisted in preparing any tax return or other tax-related document;

(iii) all persons who assisted in the marketing or preparation of materials used by Bailey or written materials sent to potential customers;

(iv) all persons or entities, including the taxpayer identification number, who purchased or used any other tax shelter, plan, or arrangement that Bailey has promoted; and

(v) all individuals of whom he is aware who currently promote, or within the last five years have promoted, the purported federal grant program for minority-owned businesses promoted by Bailey, including all those who have acted as promoters on behalf of S-N-K Enterprise; and

(c) File sworn certificates certifying that he had complied with these requirements.

3. On February 5, 2004, the United States served copies of the January 21 and 29 orders and judgments on Harris, S-N-K, and Bailey, respectively.

4. On February 25, 2004, the United States filed a motion to hold Harris, S-N-K, and Bailey in civil contempt for failing to comply with the January 21 and 29 orders and judgments.

5. On March 10, 2004, Harris and Bailey filed a response to the United States' motion for contempt that consisted of copies of letters they had sent to the President of the United States and the Chief Justice of the United States Supreme Court advocating frivolous theories about the federal tax system and the federal government.

6. On March 11, 2004, the court signed an order directing Harris, S-N-K, and Bailey to appear before the court on March 31, 2004, at 10 o'clock a.m., and show cause why the court should not hold them in contempt. The court also ordered the United States to serve those defendants with copies of the Order to Show Cause at least five business days before March 31, 2004.

7. On March 18, 2004, the United States served copies of the Order to Show Cause signed March 11, 2004, on Harris, S-N-K, and Bailey.

8. On March 31, 2004, at 10 o'clock a.m., the court held a show cause hearing. Gregory Van Hoey appeared on behalf of the United States. Neither Harris nor Bailey appeared at the hearing. No one appeared on behalf of S-N-K.

9. At the show cause hearing, Van Hoey orally certified to the court that he had personal knowledge that the United States had served the Order to Show Cause dated March 11, 2004, on Harris, S-N-K, and Bailey, and that neither Harris, S-N-K, nor Bailey had complied with the directives of the January 21 and 29 orders and judgments.

10. In open violation of the January 21 and 29 orders and judgements, Harris, S-N-K, and Bailey (1) have not provided any of the documents described in the January 21 and 29 orders and

judgments to counsel for the United States, and (2) have not filed any of the certifications required by those orders and judgments. None of the defendants appeared before the court on March 31, 2004, to show cause why the court should not find them in contempt for those violations.

Conclusions of Law

Harris, S-N-K, and Bailey each are in civil contempt of this court. The affidavits and declarations filed by the United States, as well as the statements by counsel for the United States before this court, demonstrate by clear and convincing evidence that (1) the January 21 and 29 orders and judgments were in effect as to Harris and S-N-K as of January 21, 2004, and as to Bailey as of January 29, 2004, (2) those orders and judgments contained the directives outlined above in paragraphs 1 and 2, and (3) Harris, S-N-K, and Bailey did not comply with those directives. Furthermore, despite being provided with notice and an opportunity for hearing, none of those three defendants appeared at the show cause hearing, and the documents filed by Harris and Bailey in response to the United States' motion for contempt were patently frivolous.

In fashioning sanctions for civil contempt, district courts should consider “the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” United States v. United Mine Workers, 330 U.S. 258, 304 (1947). Appropriate sanctions may include a coercive daily fine, a compensatory fine, coercive incarceration, or a combination thereof. Int'l Union, United Mine Workers v. Bagwell, 512 U.S. 821, 827-29 (1994); Dinnan v. Bd. of Regents of the Univ. Sys. of Ga., 625 F.2d 1146, 1150 (5th Cir. 1980). Courts have recognized that incarceration is an appropriate sanction for civil contempt as long as its purpose is to compel compliance with a

court order and not to punish the contemnor. Bagwell, 512 U.S. at 826-27; Shillitani v. United States, 384 U.S. 364, 370-71 (1966); Dinnan, 625 F.2d at 1149-50.

The court finds that the magnitude of harm threatened by the continued contumacy of Harris, S-N-K, and Bailey is great. Specifically, if these defendants do not notify their customers of the court's orders and of the illegality of their tax scheme, the customers may be unable to avoid liability to the IRS for any erroneous refunds they received and for penalties for filing frivolous tax returns. Notice of the court's orders may allow the customers to return the refunds and avoid monetary penalties. Moreover, if these defendants do not provide counsel for the United States with records identifying the customers and co-promoters of their abusive tax scheme, IRS efforts to shut down the scam and avoid future losses to the United States Treasury will be impeded.

Furthermore, lesser sanctions than coercive incarceration would be ineffective to secure compliance with the injunctions. Neither Harris, S-N-K, nor Bailey appeared at the show cause hearing despite the United States' suggesting a \$2,000 daily coercive fine as a sanction against each of these defendants in its motion for contempt. Instead, Harris and Bailey filed frivolous documents with the court in response to the United States' motion. Their response to the threat of contempt and a daily coercive fine indicates that they have no intention of complying with the permanent injunctions. Thus, coercive incarceration is necessary to compel these defendants to comply with the court's orders. Harris and Bailey will be able to purge their contempt and obtain their release by complying with the orders set forth below. As the Supreme Court has noted, in that sense a civil contemnor "carries the keys of his prison in his own pocket." Bagwell, 512 U.S. at 828 (quoting In re Nevitt, 117 F. 448, 451 (8th Cir. 1902)).

Order

Based on the foregoing findings of fact and conclusions of law,

The court hereby **ORDERS** and **DECLARES** that:

1. Defendants Sherri L. Harris, S-N-K Enterprise, Inc., and Kelvin Bailey are in civil contempt of this court;
2. Sherri L. Harris be coercively incarcerated until she:
 - (a) Contacts in writing all persons for whom she prepared and/or assisted in the preparation of any federal tax returns or tax-related documents and informs those persons of:
 - (i) the signing and contents of the court's January 21 order and judgment;
 - (ii) the possibility that the United States may seek to recover any erroneous payment those persons may have received; and
 - (iii) the possibility of the imposition of frivolous-return penalties against those persons;
 - (b) Provides counsel for the United States all records in her possession, or to which she has access, that identify the names, addresses, and phone numbers of:
 - (i) all persons or entities, including the taxpayer identification number, to whom Harris gave or sold, directly or indirectly, any materials related to the purported federal grant program for minority-owned businesses;
 - (ii) all persons or entities, including the taxpayer identification number, for whom Harris or her associates prepared or assisted in preparing any tax return or other tax-related document;
 - (iii) all persons who assisted in the marketing or preparation of materials used by Harris or written materials sent to potential customers;

(iv) all persons or entities, including the taxpayer identification number, who purchased or used any other tax shelter, plan, or arrangement that Harris has promoted; and

(v) all individuals of whom Harris is aware who currently promote, or within the last five years have promoted, the purported federal grant program for minority-owned businesses promoted by Harris, including all those who have acted as promoters on behalf of S-N-K Enterprise; and

(c) Files an affidavit stating under oath that she has complied with the requirements of 2(a) and (2)(b) above.

3. Kelvin Bailey be coercively incarcerated until he:

(a) Contacts in writing all persons for whom he prepared and/or assisted in the preparation of any federal tax returns or tax-related documents and informs those persons of:

(i) the signing and contents of the court's January 29 order and judgment;

(ii) the possibility that the United States may seek to recover any erroneous payment those persons may have received; and

(iii) the possibility of the imposition of frivolous-return penalties against those persons;

(b) Provides counsel for the United States all records in his possession, or to which he has access, that identify the names, addresses, and phone numbers of:

(i) all persons or entities, including the taxpayer identification number, to whom Bailey gave or sold, directly or indirectly, any materials related to the purported federal grant program for minority-owned businesses;

(ii) all persons or entities, including the taxpayer identification number, for whom Bailey or his associates prepared or assisted in preparing any tax return or other tax-related document;

(iii) all persons who assisted in the marketing or preparation of materials used by Bailey or written materials sent to potential customers;

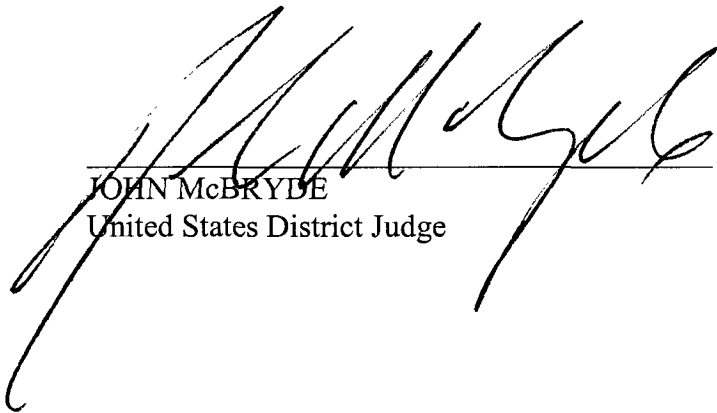
(iv) all persons or entities, including the taxpayer identification number, who purchased or used any other tax shelter, plan, or arrangement that Bailey has promoted; and

(v) all individuals of whom he is aware who currently promote, or within the last five years have promoted, the purported federal grant program for minority-owned businesses promoted by Bailey, including all those who have acted as promoters on behalf of S-N-K Enterprise; and

(c) Files an affidavit stating under oath that he has complied with the requirements of 3(a) and (3)(b) above.

4. The clerk issue, and deliver to the United States Marshal, warrants for the arrest of Sherri L. Harris and Kelvin Bailey for confinement as directed by this order.

SIGNED April 5, 2004.



JOHN McBRYDE
United States District Judge