

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 5:03-cv-436-Oc-10GRJ

EDDIE RAY KAHN, et al.,

Defendants.

**ORDER MODIFYING
CIVIL CONTEMPT ORDER**

This case is before the Court for consideration of the Government's "Motion to Modify Civil Contempt Sanction Against Defendants Eddie Kahn and Bryan Malatesta and Order Their Incarceration" (Doc. 110). By order of this Court signed June 30, 2004 (Doc. 105) , Defendants Eddie R. Kahn and Bryan Malatesta were adjudicated in civil contempt of this Court's injunctive order (Doc. 29) and fined \$500.00 for each day thereafter that they remained non-compliant.¹ The Government now moves to modify these sanctions and requests that the Court order the Defendants' incarceration. Upon due consideration, the Government's motion (Doc. 110) is due to be granted.

¹ Defendant David Stephen Lokietz was also adjudicated in contempt and similarly fined. The Government submits that Defendant Lokietz is now willing to comply with the preliminary injunction and that in the event he purges himself of contempt, it will move to vacate some or all of the fines imposed.

Defendants Kahn and Malatesta have each failed to pay the \$500.00 per diem fine imposed on them and have failed to purge themselves of contempt. Defendant Kahn has filed no papers in response to the Government's motion, and, indeed, Defendant Kahn has changed his mailing address without informing the Court or the Government of his new contact information. Defendant Malatesta has filed several documents in response to the Order of contempt (see Docs. 108, 109, 112, and 114); however, each argument raised in these pleadings is without merit² and fails to demonstrate Malatesta's inability to comply with all aspects of the injunctive order. The Court, therefore, finds as to each Defendant, individually, that there is no realistic possibility that any mode of enforcement other than incarceration will coerce compliance with the preliminary injunction and it is necessary to modify the sanctions imposed on these Defendants in order to obtain their compliance.

² Defendant Malatesta claims that he never received a copy of the Court's injunctive order (Doc. 29); however, the record reveals that notice was in fact sent to the proper address. Malatesta further maintains that service of process was never properly effected on him because the summons did not bear the seal of the court as required by Fed. R. Civ. P. 4(a). However, the affidavit of service filed by the Government (Doc. 44) shows that a valid summons was properly served on the Defendant.

Accordingly, upon due consideration, it is adjudged that:

(1) the United States' Motion to Modify Civil Contempt Sanction Against Defendants Eddie Kahn and Bryan Malatesta (Doc. 110) is GRANTED.

(2) Defendant Eddie R. Kahn remains in civil contempt of the Court's injunctive order (Doc. 29), and the Clerk is directed to issue a bench warrant for his arrest and detention until such time as he purges his contempt by complying with the injunctive order.

(3) Defendant Bryan Malatesta remains in civil contempt of the Court's injunctive order (Doc. 29), and the Clerk is directed to issue a bench warrant for his arrest and detention until such time as he purges his contempt by complying with the injunctive order.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 12th day of August, 2004.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
Maurya McSheehy