

In the United States Bankruptcy Court

for the Northern District of Iowa

ROBERT DUANE BLISS

Debtor(s).

Bankruptcy No. 93-12048KC

Chapter 7

ORDER

ORDER

On November 29, 1994, the above-captioned matter came on for hearing pursuant to assignment. The matter before the Court was Trustee's Application for Order to Show Cause Why Debtor Should Not Be Held in Contempt. Trustee Tom McCuskey appeared at the hearing. Also present was John Schmillen on behalf of the U.S. Trustee. Debtor Robert Bliss did not appear at the hearing nor did his counsel of record, Attorney Constance Peschang Stannard.

The underlying rule to show cause is premised upon the Trustee's attempts to obtain a release from Debtor which would allow access to information and turnover of stock from Debtor's employer, Archer Daniels Midland Co. Debtor allegedly did not respond to Trustee's requests. Trustee's Application seeks an order finding contempt for Debtor's failure to cooperate as required by 11 U.S.C. § 521.

Before the scheduled hearing, Debtor, through his counsel, apparently forwarded certain documents to Trustee, arguably in response to Trustee's Application. The order setting the hearing states that "Debtor shall appear" to show cause why he should not be held in contempt. It is noted that neither Debtor nor his counsel filed any responsive pleading to the application, they did not request a continuance, they did not contact Court personnel to determine if their appearance was necessary, and they did not appear at the time of hearing.

A Court may utilize both civil and criminal contempt powers in response to a party's violation of a court order. In re Ragar, 3 F.3d 1174, 1180 (8th Cir. 1993). A finding of civil contempt requires only that a specific and definite court order be violated by a party that has knowledge of the court's order. In re Peck, 155 B.R. 301, 308 (Bankr. D. Conn. 1993). Contempt powers apply to violations of orders requiring attendance at a hearing such as the hearing set herein to show cause. United States v. Revie, 834 F.2d 1198, 1200 (5th Cir. 1987), cert. denied 487 U.S. 1205 (1988). Counsel may also be subject to sanctions for failing to appear at a scheduled hearing. United States v. KS & W Offshore Eng'g, Inc., 932 F.2d 906, 907 (11th Cir. 1991). The fact that a party has responded to a motion to show cause by performing as requested is irrelevant to a finding of contempt. In re Dennig, 98 B.R. 935, 940 (Bankr. N.D. Ind. 1989) (finding debtor in contempt even though he complied with turnover order at the time of the hearing).

The Court points out that the merits of the underlying motion are not at issue in this order, nor is it clear whether the information Debtor's counsel gave to Trustee before the hearing satisfies the Trustee's requests. Even assuming, *arguendo*, that it does satisfy the Trustee, Debtor's presence at the hearing to show cause is not excused. Appearance by Debtor is mandated by the Court's Order setting hearing to show cause. His failure to appear, as ordered, can in and of itself form the basis for a finding of contempt.

Debtor Robert Bliss and his attorney of record, Constance Peschang Stannard, failed to appear at a regularly scheduled Court hearing. As such, the Court enters the following Order:

1. Both Debtor and his counsel of record are ordered to personally appear before the Court on the **22nd** day of **December, 1994 at 11:15 a.m.** at the United States Bankruptcy Court Room, 800 The Center, 425 Second Street SE, CEDAR RAPIDS, IOWA.

2. At the time of hearing, the Court shall provide an opportunity to Debtor and his counsel to present evidence as to why they failed to appear at the regularly scheduled hearing on November 29, 1994 at 9:00 a.m.

3. The Court shall also consider, at that time, the Trustee's Application for Order to Show Cause why Debtor should not be held in contempt filed October 28, 1994.

SO ORDERED this 1st day of December, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge