

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

Settlement Facility-Dow Corning Trust.

Case No. 00-00005

Honorable Denise Page Hood

**MEMORANDUM OPINION AND ORDER REGARDING THE
ORDER TO SHOW CAUSE AGAINST ATTORNEY WILLIAM W. RUTH**

I. BACKGROUND

This matter is before the Court on an Order to Show Cause for William W. Ruth to Show Cause Why He Should Not Be Sanctioned and Held in Contempt. Attorney Ruth has filed a response. A hearing was held on the matter.

The Finance Committee of the Settlement Facility - Dow Corning Trust issued a \$10,000 check in claim funds for a Claimant Attorney Ruth represents. The Finance Committee asserts that the check was cashed, but that Attorney Ruth failed to verify that the funds were received by the Claimant. The Finance Committee claims that Attorney Ruth has provided a number of explanations, including: that the check may have been lost; the Claimant is deceased and that the funds were provided to a relative; and, that the endorsement on the check was not signed by Attorney Ruth, but by a former legal assistant who stole the check. The Finance Committee asserts that Attorney Ruth cashed a claim payment check intended for Claimant, failed to provide

updated address information for the Claimant, failed to provide proof of distribution claim funds to the Claimant, and failed to return claim funds that were not distributed to the Claimant. Attorney Ruth is the attorney-of record representing Claimant who submitted a claim before the SF-DCT.

After determining that Claimant had an allowed Claim, the SF-DCT sent a claim payment check on September 24, 2014 in the amount of \$10,000 to Attorney Ruth's law office for distribution to Claimant. An award notification letter was mailed directly to Claimant, but was returned undeliverable, with no forwarding address. The SF-DCT sent written requests to Attorney Ruth for updated addresses for Claimant or information as to Claimant's status, but no information was provided to the SF-DCT by Attorney Ruth. The check was cashed and no confirmation that the payment was distributed to Claimant was sent to the SF-DCT. Written requests for the return of the funds were sent to Attorney Ruth, but the funds were not returned.

In response, Attorney Ruth asserts that until the Finance Committee's filings in January 2018, he was not aware of any other filings by the Finance Committee. Attorney Ruth states he is not a party in any matter before the Court and there is no order issued by the Court requiring him to act in any matter. Attorney Ruth claims that despite the Finance Committee's statements, he has been responsive to the Committee's inquiries. Unfortunately, Attorney Ruth states he cannot produce what

is no longer in his possession. Attorney Ruth's law office has been closed for almost 15 years and has no knowledge of the particular claimant. Only recently did the Committee provide Attorney Ruth of a copy of the alleged check supposedly sent to him. Attorney Ruth claims he never saw the check and that the signature on the check is not his signature. Attorney Ruth believes that a former employee, who was involved in other forgeries, signed Ruth's name on the check.

Attorney Ruth submitted an affidavit, including the criminal record of Brittney Meador, the former employee Ruth Claims to have forged his signature. Attorney Ruth claims that when he closed down his practice 15 years ago, he notified the SF-DCT that he was closing his office. He attempted to refer his breast implant claimants clients to other attorneys, but he was not successful in doing so. He informed his clients of the closing of his practice, but many had no forwarding addresses. Attorney Ruth claims he paid to do "skip tracing" on some of his clients. He asserts he was not negligent in handling these claimants. Attorney Ruth states that he could not access the particular Claimant's file since he no longer had the files. When the Committee recently provided him with a copy of the cashed check, he immediately realized it was not his signature on the check. Attorney Ruth notes that he had hired Brittney Meador in July 2014 to clean his house. He later discovered that Ms. Meador had forged some of his personal checks and that she had fabricated a loan she had alleged to have

obtained to pay for damage she did on his truck. He thereafter contacted the police and discovered that this was not the first time Ms. Meador had forged a signature.

Attorney Ruth responds that he was not aware that the check was received by his office and that the Finance Committee cannot show that the endorsement on the check was made by Attorney Ruth.

The Settlement and Fund Distribution Agreement (SFA) provides that the funds distributed by the Settlement Facility are in the custody of the Court until they are paid to and actually received by the Claimant. (SFA § 10.09)

II. ANALYSIS

A. Contempt Standard

There are two types of contempt: criminal and civil. The real distinction between criminal and civil contempt is the nature of the relief sought and the purpose of that relief. *Penfield Co. v. SEC*, 330 U.S. 585 (1947). A contempt proceeding is civil if the purpose is “remedial” and intended to coerce the person into doing what he is supposed to do. *Shillitani v. U.S.*, 384 U.S. 364 (1966). Civil contempt is to coerce future compliance with the order and to compensate the opposing party for the party’s violation of an order. *United States v. Bayshore Associates, Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991). Remedial or compensatory action are essentially backward looking, seeking to compensate the complainant through payment of money

for damages caused by past acts of disobedience. *Garrison v. Cassens Transport Co.*, 334 F.3d 528, 543 (6th Cir. 2003)(quoting *Latrobe Steel Co. v. United Steelworkers*, 545 F.2d 1336, 1344 (3d Cir. 1976)). Wilfulness is not a necessary element of civil contempt. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1948); *TWM Mfg. Co. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983). The burden of proof in a civil contempt proceeding is on the party seeking a contempt order but need not be beyond a reasonable doubt. *Int'l Union, United Mine Workers of America, v. Bagwell*, 512 U.S. 821, 827 (1994). Civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are coercive sanctions and avoidable through obedience. *Id.* at 827. Civil sanctions may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. *Id.*

If the purpose is to vindicate the court's authority by using “punitive” measures or punishing the wrongdoer, the proceeding is one for criminal contempt. *Garrison*, 334 F.3d at 543. Criminal contempt is a crime and the penalties, including imprisonment and noncompensatory fines, may not be imposed without the protections of the Constitution required in criminal proceedings. *Int'l Union, United Mine Workers of America*, 512 U.S. at 826, 838. The rules governing criminal contempt is found in Fed.R.Crim.P. Rule 42(b). For “serious” criminal contempt proceedings involving imprisonment of more than six months or noncompensatory

and excessive fines, these protections include the right to a jury trial. *Id.* at 826-27, 838-39.

In order to hold a litigant in civil contempt, the movant must first present “clear and convincing evidence” that shows that the litigant “violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court’s order.” *Electrical Workers Pension Trust Fund of Local Union No. 58 v. Gary’s Elec. Serv. Co.*, 340 F.3d 373, 379 (6th Cir. 2003). “Clear and convincing evidence is not a light burden and should not be confused with the less stringent, proof by a preponderance of the evidence.” *Id.* “Clear and convincing evidence is ‘that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.’” *Hobson v. Eaton*, 399 F.2d 781, 784 n.2 (6th Cir. 1968)(citation omitted). Once the movant establishes a prima facie case, the burden shifts to the contemnor who may defend by coming forward with evidence showing that he or she is *presently* unable to comply with the court’s order by showing categorically and in detail why he or she unable to comply with the court’s order. *Elec. Workers*, 340 F.3d at 379. A court must evaluate whether the contemnor

took all reasonable steps within his or her power to comply with the court's order. *Id.*

B. Findings

Applying the standard set forth in *Electrical Workers Pension Trust Fund* (the case cited by the Finance Committee in its brief), the Court finds that the Finance Committee has not met its initial burden of presenting “clear and convincing evidence” that the litigant “violated a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order.” 340 F.3d at 379. As acknowledged by the Finance Committee and Attorney Ruth, at the time the motion was filed, there was no court order which required Attorney Ruth to act on any matter. The Finance Committee has not established a prima facie case that Attorney Ruth has violated any court order.

II. CONCLUSION

For the reasons above,

IT IS ORDERED that the Motion for Order to Show Cause as to Attorney William W. Ruth Why He Should Not be Held in Contempt/Sanctioned filed by Finance Committee (**ECF Nos. 1353/1367**) is **DENIED**.

S/DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge

DATED: August 12, 2022