

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELAINE L. CHAO, SECRETARY : CIVIL ACTION  
OF LABOR, UNITED STATES :  
DEPARTMENT OF LABOR :  
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 :  
v. :  
 :  
 :  
COMMUNITY TRUST COMPANY : NO. 05-mc-18

MEMORANDUM AND ORDER

McLaughlin, J.

September 26, 2005

This decision addresses the renewed motion for adjudication of civil contempt filed by Elaine L. Chao, the Secretary of Labor for the United States Department of Labor ("DOL"), and the motion for reconsideration filed by Community Trust Company ("CTC") regarding the Court's order of August 17, 2005.

The Court will partially grant the renewed motion for adjudication of civil contempt, based only upon CTC's noncompliance with the order of August 17, 2005. It will deny the motion for reconsideration in its entirety.

I. Procedural Background

This dispute arises from a subpoena duces tecum issued by Chao and directed to CTC on December 23, 2004. CTC is the trustee of the Regional Employers' Assurance Leagues Voluntary

Employees' Beneficiary Association Health and Welfare Benefit Plan ("REAL VEBA"). The REAL VEBA is the subject of a fiduciary investigation that the Department of Labor is conducting pursuant to 29 U.S.C. § 1134(a) ("ERISA"). CTC has refused to produce documents responsive to the subpoena.

On January 25, 2005, Chao filed a petition to enforce the administrative subpoena, which this Court granted in an order of May 5, 2005. CTC filed a motion to dismiss the petition.

In its motion to dismiss the petition, CTC argued that the DOL had no authority to issue the subpoena because the DOL had not yet clearly established that the REAL VEBA is covered by ERISA. The Court disagreed, finding that the DOL has broad authority to investigate whether someone has violated or is about to violate ERISA. It found that the DOL was not required to show that the REAL VEBA is within ERISA before seeking enforcement.

CTC also argued that the Gramm-Leach-Bliley Act, 15 U.S.C. ¶ 6802(a) ("GLBA"), prohibits it from disclosing personal information about its customers without prior notice. The Court found that the GLBA exempts financial institutions from the notice requirements when disclosure is required by a properly authorized subpoena.

Finally, CTC argued that the Financial Privacy Act, 12 U.S.C. § 3401 ("FPA"), requires notice before the production of certain documents. It argued that this requirement applies to

all documents containing personal financial information about customers, and not only those containing customer names. This Court found that the only records protected under the Act are those "in relation to an account maintained in [a] person's name," with a "person" being an "individual or a partnership of five or fewer individuals." Thus, unless CTC documents contain the names of persons within the meaning of the Act, they are not protected by the Act.

On June 6, 2005, Chao filed a motion for adjudication of civil contempt, which this Court denied without prejudice on June 15, 2005. Also on June 15, 2005, the Court denied CTC's request for a stay of the order of May 5, 2005, and ordered CTC to comply with the subpoena by June 30, 2005. CTC filed a request for a stay with the United States Court of Appeals for the Third Circuit, which was denied on June 28, 2005. On July 1, 2005, Chao filed a renewed motion for adjudication of civil contempt.

On August 17, 2005, the Court held a hearing at which CTC was ordered to show cause why it should not be held in contempt. At the hearing, the Court asked counsel for CTC if CTC would produce any documents. Counsel said that CTC would produce documents if they could be redacted. Counsel for CTC stated that he would want "the names of the individual employees," "their Social Security numbers, and "their account numbers" redacted.

(8/17/05 Hr'g Tr. p. 7). Later, counsel stated that he would also want "an employer" redacted. (8/17/05 Hr'g Tr. p. 7).

The Court then asked if there were any documents that would not need to be redacted because they did not contain any employee names. Counsel for CTC said that organization documents were the only records that did not contain employee names. When asked whether "[a]ll the other documents you have, other than the organizational documents, have names of individual people," counsel for CTC responded, "Yes." (8/17/05 Hr'g Tr. pg. 17). Later, opposing counsel suggested that CTC might have certain documents without names, and counsel for CTC agreed, claiming that he never "spoke in absolutes." (8/17/05 Hr'g Tr. pg. 20).

The Court allowed a five minute recess to give counsel for CTC the opportunity to discuss which documents do not contain employee names with the President and CEO of CTC, who was present at the hearing. After the recess, counsel for CTC agreed that "deposits," "wire authorizations," "account statements," and "wire sheet disbursements" do not contain employee names and would be produced on "Monday." (8/17/05 Hr'g Tr. pg. 22, 23). Counsel then confirmed again that the documents would be produced. (8/17/05 Hr'g Tr. pg. 26).

Finally, the Court asked CTC's attorney the following: "So on Monday morning, you will be producing everything you have responsive to this subpoena except for those documents that have

the names of individual employees on them?" (8/17/05 Hr'g Tr. pg. 33). CTC's attorney responded: "That is correct." (8/17/05 Hr'g Tr. pg. 33).

On August 17, 2005, the Court issued an order which revised its order of May 5, 2005 to conform precisely with the terms to which CTC agreed at the show cause hearing. It ordered CTC to "produce all documents responsive to the subpoena duces tecum issued and directed to it by the United States Department of Labor on or before Monday, August 22, 2005, except for those documents which contain the names of specific employees." It held the renewed motion for adjudication of civil contempt in abeyance, giving CTC the opportunity to avoid being held in contempt by complying with the new order.

On August 22, 2005, instead of producing the documents required by the subpoena and the Court's order, CTC filed a motion for reconsideration of the order of August 17, 2005 -- the order to which it had agreed on the record on August 17, 2005. In its motion, CTC stated that it produced the trust agreement and relevant plan agreement, but that it had been ordered by its client not to produce the documents it had already agreed to produce. In its motion for reconsideration, CTC reiterated the three arguments that the Court had already rejected in its order of May 5, 2005.

The Court had a telephone conference with the parties to discuss the motion for reconsideration on August 23, 2005. By requiring precise answers to its questions, the Court was able to establish that Mr. Koresko, the representative of the REAL VEBA, and his counsel, Ms. Miller, had told CTC to violate the order to which CTC had agreed. CTC stated that it had chosen to violate the Court's Order, rather than the directions of its client. Although the two lawyers on the phone for CTC tried to suggest that the documents contained employee names, they ultimately conceded that they did not. (8/23/05 Hr'g Tr. pg. 9, 10).

## II. Discussion

### A. Reconsideration of the Order of August 17, 2005

A motion for reconsideration requires a showing of (1) an intervening change in the law, (2) the availability of new evidence, or (3) the need to correct a clear error of law or fact to prevent manifest injustice. Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

In its motion, CTC does not argue that there was a change in the law or that new evidence became available between August 17, 2005 and August 22, 2005. CTC does not even argue that there is a need to correct a clear error of law or prevent manifest injustice. In any event, the Court concludes that none of these requirements are met here.

Even if the Court were to reconsider its earlier decision, the Court would reach the same conclusion it did on May 5, 2005. The Court has already ruled that the DOL had the authority to issue its subpoena. Thus, the Court had subject matter jurisdiction for its orders enforcing the subpoena. The Court has also already ruled that CTC cannot face liability under the GLBA for complying with a properly authorized subpoena. Finally, the Court has limited the documents to be produced so that the Court's decision does not implicate the FPA, even under the respondent's view of that statute.

B. Contempt

CTC has refused to comply with Court orders -- even an order to which it agreed. The Court has bent over backwards to accommodate all of CTC's concerns, to the point of revising its order to reflect what CTC agreed to produce. The Court has no choice but to hold CTC in civil contempt.

To hold CTC in civil contempt, the Court must find that "(1) a valid court order existed, (2) the defendant had knowledge of the order, and (3) the defendant disobeyed the order." Harris v. City of Philadelphia, 47 F.3d 1311, 1326 (3d Cir. 1995).

CTC has acknowledged the order of August 17, 2005 and its disobedience of it in its motion for reconsideration. It has refused to comply with the order, citing no valid grounds for

reconsideration and instead rearguing legal issues that have already been resolved by this Court.

The Court has given CTC multiple opportunities to avoid being held in contempt. When CTC failed to comply with the Court's order of May 5, 2005, and Chao moved for an adjudication of civil contempt, the Court denied Chao's motion. In doing so, it gave CTC time to appeal the denial of its motion for a stay of enforcement, and the United States Court of Appeals for the Third Circuit denied CTC's appeal. The Court allowed CTC to present its arguments once again on August 17, 2005. At the hearing on that date, CTC continuously changed its proposals and position. When CTC clarified its position, the Court issued another order containing language representing the exact document production to which CTC had agreed, and held Chao's renewed motion in abeyance. On August 23, 2005, CTC continued to present contradictory facts and arguments.

CTC has now refused to comply with a court order to which it had agreed. This Court has entertained CTC's arguments on multiple occasions, but cannot continue to allow it to flout valid orders without consequences. Therefore, this Court will hold CTC in civil contempt.

An appropriate order follows.

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COMMUNITY TRUST COMPANY : NO. 05-mc-18

ORDER

AND NOW, this 26th day of September, 2005, IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration of the Order of August 17, 2005 (Docket # 28) is DENIED for the reasons expressed in a Memorandum dated September 21, 2005.

IT IS FURTHER ORDERED that Petitioner's Renewed Motion for Adjudication of Civil Contempt (Docket # 20) is GRANTED IN PART for the reasons expressed in a Memorandum of today's date. It is GRANTED with respect to Respondent's failure to comply with the Court's Order of August 17, 2005, which required Respondent to produce all documents responsive to the subpoena duces tecum issued and directed to it by the United States Department of Labor on or before Monday, August 22, 2005, except for those documents containing the names of specific employees. It is DENIED with respect to Respondent's failure to comply with any aspect of the Court's Order of May 5, 2005 that differs from the Court's Order of August 17, 2005.

The Respondent must pay a coercive fine of \$250.00 per day beginning on September 26, 2005, and continuing until such time as the Respondent complies with the directives of this Court. The Respondent should pay the coercive fine to the Court Finance Officer in the Clerk of Court's Office at the United States Courthouse. The check should be made payable to "Clerk U.S.D.C."

The Respondent is further required to pay the Petitioner a compensatory fine equal to the fees and costs associated with filing the Renewed Motion for Civil Contempt. The amount of the compensatory fine will be determined after the Petitioner files supplemental documents in support of the fees and costs and the Respondent has an opportunity to object to the amount of the fees and costs.

BY THE COURT:

/s/ Mary A. McLaughlin  
MARY A. McLAUGHLIN, J.