

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04 C 7403
)	
WILLIAM J. BENSON, individually and)	Judge Samuel Der-Yeghiayan
d/b/a Constitutional Research Associates,)	
)	
Defendant.)	
_____)	

MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES’ MOTION TO HAVE DEFENDANT WILLIAM J. BENSON HELD IN CONTEMPT

On January 10, 2008, this Court entered a Permanent Injunction (Doc. 116) against the defendant, William J. Benson, which prohibited him from organizing, promoting and selling his “Reliance Defense Package” and “16th Amendment Reliance Package” as abusive tax shelters under sections 6700 and 7408 of the Internal Revenue Code (26 U.S.C.) (“IRC”). The Court also entered an injunction under IRC § 7402(a) that required Benson to “mail . . . a copy of the injunction order to every person and entity to whom he sold or furnished the ‘Reliance Defense Package’ or ‘16th Amendment Reliance Package’ . . .” (Doc. 116 at 4). Benson has refused to fully comply with the above-quoted provision of the Permanent Injunction. Instead, according to his Declaration, Benson neither admitted or denied selling or furnishing the Reliance Defense Package and “16th Amendment Reliance Package, and merely sent copies of the Permanent Injunction to the seven customers identified in the Government’s motion for summary judgment. Because Benson has violated a court order, the Court should hold him in civil contempt and impose sanctions to compel his compliance with the Permanent Injunction.

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STATEMENT OF THE CASE

1. On January 10, 2008, this Court entered a Permanent Injunction against the defendant, William J. Benson, in the above-captioned civil action. Doc. 116.

2. Paragraph (f) of the Permanent Injunction required Benson to

within 14 days of the entry of this permanent injunction, mail (by United States mail, and, if an e-mail address is known, by electronic mail) a copy of the injunction order to every person and entity to whom he sold or furnished the “Reliance Defense Package” or “16th Amendment Reliance Package” . . .

3. On January 22, 2008, defendant filed his “Declaration of William J. Benson” with the Court. Paragraph 2 of the Declaration stated that “[u]pon advice of my attorney, and under the Fifth Amendment to the United States Constitution, I neither admit nor deny that I sold or furnished the ‘Reliance Defense Package’ to anyone, or that I furnished the ‘16th Amendment Reliance Package’ to anyone.” Doc. 138, ¶2.

4. Paragraph 3 of the Declaration of William J. Benson stated that “[c]opies of the Court’s Permanent Injunction were mailed by United States mail, on January 22, 2008, to the following individuals identified by Revenue Agent Ponzo in his declaration in support of summary judgment, at the following addresses:

Ronald K. Doyle (address omitted)

Rolan R. Becker (address omitted)

Phyllis A. Jacobsen (address omitted)

Brett Curtis (address omitted)

Dale A. Heinz (address omitted)

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Michael Hamilton (address omitted)

Floyd Sheperd (address omitted)

Doc. 148, ¶4.

5. The fifth paragraph of the Declaration of William J. Benson stated that copies of the Permanent Injunction were mailed to “Applicant Interveners John Doe I and John Doe II.” Doc. 148, ¶5.

ARGUMENT

BENSON HAS REFUSED TO COMPLY WITH A COURT ORDER AND SHOULD BE HELD IN CIVIL CONTEMPT

For a party to be held in civil contempt, that party must have violated an order or decree that “set[s] forth in specific detail an unequivocal command.”¹ The party asserting the violation of a court order has the burden of proving the violation by clear and convincing evidence.² The language of paragraph (f) of the Permanent Injunction, which required the defendant to send copies of the Permanent Injunction to each of his customers (or the persons to whom he furnished copies of the “Reliance Defense Package” and “16th Amendment Reliance Package”), is clear, unambiguous, and perfectly amenable to being enforced through a contempt proceeding.

In paragraph (f) of the Permanent Injunction, Benson was commanded, in specific and unequivocal terms, to send a copy of the Permanent Injunction to his customers and those whom

¹ *Jones v. Linc. Elec. Co.*, 188 F.3d 709, 738 (7th Cir. 1999); *see United States v. Dowell*, 257 F.3d 694, 699 (7th Cir. 2001).

² *Dowell*, 257 F.3d at 699. The “clear and convincing” standard is a “greater burden of proof than “preponderance of the evidence.” *Hernandez v. O’Malley*, 98 F.3d 293, 295 (7th Cir. 1996).

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he furnished with copies of the “Reliance Defense Package” and “16th Amendment Reliance Package.” By choosing to send copies of the Permanent Injunction solely to the seven individuals identified in the Government’s motion for summary judgment, Benson willfully violated the Permanent Injunction.³

There was no justification for the defendant’s refusal to comply with the provision of the Permanent Injunction that unambiguously required him to send a copy of the Court’s order to his customers and those to whom he furnished his commercial tax products. Whether he agreed with it or not, when Benson chose to send copies of the Permanent Injunction to the seven individuals mentioned in the Government’s motion for summary judgment, he acknowledged that he did, in fact, have customers who were required to receive a copy of the Permanent Injunction.⁴ Once he acknowledged that he had customers, he was not privileged to pick and choose from among them the ones to whom he was required to send a copy of the Permanent Injunction.⁵

³ It is not necessary to a finding of contempt that a violation was “willful.” It is enough that a party “has not been reasonably diligent and energetic in attempting to accomplish what was ordered.” *Goluba v. School Dist. of Ripon*, 45 F.3d 1035, 1037 (7th Cir. 1995). The circumstances of this case, including the fact that the defendant chose to send copies of the Permanent Injunction to the seven individuals specifically mentioned in the United States’ Motion for Summary Judgment, demonstrate that the defendant’s violation of paragraph (f) was, in fact, willful.

⁴ Indeed, the Government had already established in its motion for summary judgment that Benson had customers such Ronald Doyle Sr.

⁵ Benson asserts that he is entitled to raise the Fifth Amendment with respect to the issue of whether he had any customers at all. This argument is specious, not only in light of the fact that the United States has already established (and Benson has acknowledged) that he had customers, but also from the standpoint that compliance with paragraph (f) of the Permanent Injunction does not require him to divulge the names of his customers, their addresses, or how

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Civil contempt is a proper means of compelling compliance with the Permanent Injunction (Doc. 116) entered in this case on January 10, 2008. Civil contempt is particularly important here because the Court has determined that the United States is not entitled to Benson's customer list. There is simply no other way for Benson's customers to learn of this Court's findings regarding the falsity of the statements made by Benson in his "Reliance Defense Package" and "16th Amendment Reliance Package." If Benson's customers are not notified of the falsity of his statements about the ratification of the Sixteenth Amendment, they may persist in their failure to file tax returns and pay federal taxes, thereby incurring substantial delinquent tax liabilities, penalties and interest.

In the civil contempt context, "coercive sanctions seek to induce future behavior by attempting to coerce a recalcitrant party . . . to comply with an express court directive."⁶ In view of his stated unwillingness to file federal income tax returns, we submit that money sanctions would not be an effective tool to coerce Benson's compliance with the Permanent Injunction. Benson should be given a period of time to purge himself of contempt by complying with the provisions of paragraph (f) of the Permanent Injunction, and filing a Declaration with the Court to that effect. In the event that the defendant still refuses to comply, the Court should incarcerate Benson until he agrees to comply with the Permanent Injunction.

many customers he actually had for his products.

⁶ *Dowell*, 257 F.3d at 699.

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CONCLUSION

For the foregoing reasons, Benson should be held in contempt of the Permanent Injunction, and appropriate sanctions should be imposed to compel his compliance with the terms of paragraph (f) of the Permanent Injunction.

Respectfully submitted this 25th day of February, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2008, I caused the following document:

**MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES'
MOTION TO HAVE DEFENDANT WILLIAM J. BENSON HELD IN
CONTEMPT**

to be served on all counsel of record by electronically filing the foregoing documents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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