

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:15-bk-4241-FMD
Chapter 7

Benjamin H. Yormak,

Debtor.

**ORDER DENYING
CREDITOR STEVEN R. YORMAK'S
MOTION FOR CONTEMPT ORDER
AND SANCTIONS AGAINST SETH E.
MILES, BRETT E. VON BORKE,
DAVID M. BUCKNER, AND
THE LAW FIRM OF BUCKNER + MILES**

THIS CASE came before the Court without a hearing to consider *Creditor Steven R. Yormak's Motion for Contempt Order and Sanctions against Seth E. Miles, Brett E. Von Borke, David M. Buckner, and the Law Firm of Buckner + Miles* (the "Motion").¹

In the Motion, Steven R. Yormak ("Creditor") asserts that Seth E. Miles, Brett E. von Borke, David M. Buckner, and the law firm of Buckner + Miles (together, "Respondents") should be found in contempt for violating this Court's *Order Arising from Status Conference on Trustee's Corrected Motion to Determine that Attorney's Fees in CBL Litigation Are Property of the Estate* (the June 17, 2019 Order).² Creditor alleges that Respondents have received attorney's fees due to Debtor, Benjamin H. Yormak, in connection with a case pending in the United States District Court for the Middle District of Florida styled *Wave Length Hair Salons of Florida, Inc. v. CBL & Associates, Inc.*, Case No. 2:2016-cv-00206 (the CBL Litigation), and that Respondents violated the June 17, 2019 Order by failing to pay attorney's

fees due to Debtor to the Chapter 7 Trustee in this bankruptcy case.

For a court to find a party in contempt for violating an order, "the offending party must have knowingly and willfully violated a *definite and specific court order*."³ "The requirements of the order violated must be clear."⁴ Here, the June 17, 2019 Order provides only that any attorney's fees due to Debtor from the CBL Litigation shall be paid directly to the Trustee; it does not identify the specific parties who are subject to the Order, does not provide a date by which the fees must be paid, and does not set forth any other requirements or details for payment. Additionally, it appears that Respondents filed a *Motion to Mediate Entitlement and Allocation of Fees* in the CBL Litigation on October 15, 2019, and asked the District Court to direct the parties to mediation regarding the allocation of the fees.⁵

For these reasons, the Court cannot find that Respondents knowingly and willfully violated a definite and specific court order, and Creditor's Motion is denied. In addition, it is the Chapter 7 Trustee's responsibility and duty to collect assets of the estate.⁶

Accordingly, it is

ORDERED that the Motion is denied, without prejudice to the Chapter 7 Trustee's right to file a motion to compel compliance with the June 17, 2019 Order.

DATED: November 14, 2019.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge

¹ Doc. No. 661.

² Doc. No. 598.

³ *In re Dorado Marine, Inc.*, 343 B.R. 711, 713 (Bankr. M.D. Fla. 2006)(citing *In re Alamo*, 239 B.R. 623 (Bankr. M.D. Fla. 1999)).

⁴ *In re Hamrick*, 551 B.R. 860, 862 (Bankr. N.D. Fla. 2016).

⁵ Exhibit 3 to Doc. No. 661.

⁶ 11 U.S.C. § 704(a)(1).