

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

B.C.B. DISPATCH, INC.

Case No. 93-10993 K

Debtor

AFCO CREDIT CORPORATION

Movant

-vs-

B.C.B. DISPATCH, INC.

Debtor

MEMORANDUM AND ORDER

Currently before the Court is Afco Credit Corp.'s Motion to adjudge the Debtor B.C.B. Dispatch, Inc. in Contempt of Court for the wilful failure to obey this Court's Order of September 8, 1993, which ordered the Debtor to pay to Afco \$2215.09 in attorney's fees "by forwarding a check in that sum to Carlucci & Legum, forthwith, upon service upon the Debtor and counsel for the Debtor of a copy of this Order."

The Order was clear and unequivocal. The Debtor at no time sought to stay, vacate or modify the Order. Yet it did not obey it. It is not the Debtor's prerogative to decide what Orders it will obey and what Orders it will not obey. If it could not afford to pay the September 8 Order in September, it should have sought relief from the Court then, and this Court could have inquired into whether the Debtor was accumulating unpaid administrative expenses.

The Debtor or its counsel is directed to pay the balance of that amount within ten days of this Order or within that time I may treat the same as wilful disobedience that may require conversion of this case to Chapter 7 for refusal or inability to pay ongoing obligations when due or

when ordered by the Court.

As to the request for a finding of contempt and for further fees, Afco Credit is directed to serve upon the Debtor's counsel a copy of the Affidavit of Steven G. Legum of December 16, 1993, with exhibits, which had been submitted to me on December 20, 1993 in an effort to obtain from me an Order to Show Cause to Punish for Contempt, which Order I denied with leave to proceed on Motion. The Debtor and its Counsel are entitled to know the documents that were submitted to me, specifically Mr. Legum's letters of September 21, 1993, October 5, 1993 and October 18, 1993, Mr. Relin's letter of October 20, 1993 and Mr. Legum's letters of October 25, 1993, November 17, 1993 and December 1, 1993.

Standing alone, those documents evidence considerable patience and restraint on the part of Afco's counsel, contrary to the Debtor's personal attacks upon him. However, because I denied the Order to Show Cause, Counsel for the Debtor might be unaware that I have even seen that correspondence. (I neglected to direct service of those documents after I denied the request for the Order to Show Cause), and might have other documents or argument to offer before I rule on the balance of the Motion.

Afco shall serve the documents before February 25, 1994 and the Debtor's response shall be filed by March 11, 1994.

Dated: Buffalo, New York
February 11, 1994

/s/Michael J. Kaplan

U.S.B.J.