U.S. Department of Justice

United States Attorney
Southern District of New York

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New York, New York 10007

August 22, 2012

By Mail and Email
Robert Meehan, Esq.
Carol Arcuri, Esq.
Adam Rodriguez, Esq.
Office of the County Attorney
Westchester County
148 Martine Avenue
White Plains, NY

Re: United States ex rel. Anti-Discrimination Center v. Westchester County, 06 Civ. 2860 (DLC) (GWG)

Dear Counsel:

We write to request the opportunity to telephonically meet and confer with you on August 24, 2012, in response to your letter of August 17, 2012. In that letter, Westchester County declined to take any action to comply with the order entered in the above-named matter by the district court on May 3, 2012 (the "May 3 Order"), until the County's appeal of that order has been resolved. In effect, the County seeks to grant itself a stay of the May 3 Order, a stay that, as you know, has been denied by the district court and the court of appeals. The County's position is therefore unacceptable and in defiance of the district court's order, and unless it is revised immediately to achieve reasonable compliance with the May 3 Order, the United States will move to hold Westchester County in contempt of court.

In the May 3 Order, the court ruled that the County was in "unambiguous breach" of the Settlement in the above-named matter, as a result of the County Executive's veto of legislation that would have prohibited source-of-income discrimination. The court ordered the County Executive to "[request] that the legislature reintroduce the prior legislation, [provide] information to assist in analyzing the impact of the legislation, and [sign] the legislation passed." The Court denied the County's application to stay the Order on May 17, 2012, and the Second Circuit denied the County's application for a stay on August 3, 2012. Accordingly, the Monitor wrote to the County on August 3, 2012, asking the County to identify by August 10, 2012, what steps the County would take to comply with the Order.

At the conference on August 10, 2012, the Court extended the County's time to respond to August 17, 2012, and stated that:

> THE COURT: . . . In terms of the May 3rd order, and I'm referring to Mr. Johnson's letter of August 9th, at the bottom—and counsel please help me if I'm missing some

> aspect of this—one issue is when the county executive is going to request the legislature to reintroduce the prior legislation. The second item is when you are going to provide information to assist in analyzing the impact of the legislation; and, of course, if the legislation is passed, a commitment to sign it.
>
> Shall we say you will make a presentation on those three topics within one week, written presentation within one week, to the monitor and to the government?
>
> MR. MEEHAN: Yes, your Honor.
>
> THE COURT: Thank you. That would be August 17th.

(Transcript of August 10, 2012, Conference, at 6-7.)

The County's response of August 17, 2012, however, fails to meet either the requirements of the Court's May 3 Order, or the Court's direction at the August 10, 2012, conference. The County's letter merely states that the County will take no action until the Second Circuit affirms the district court, at an unspecified date in the future.

The County's suggestion that it can simply wait until the Second Circuit decides its appeal is patently wrong as a matter of law. As we have previously advised you, the Supreme Court has expressly stated that "[i]f a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal." Maness v. Meyer, 419 U.S. 449, 458 (1975) (citations and quotation marks omitted); accord U.S. v. Pescatore, 637 F.3d 128, 144 (2d Cir. 2011) (quoting Maness); U.S. v. Miller, 626 F.3d 682, 698 (2d Cir. 2010) (same). The rule is plainly that "persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." GTE Sylvania, Inc. v. Consumers Union of U. S., Inc., 445 U.S. 375, 386 (1980).

Accordingly, the County's refusal to immediately comply with the May 3 Order constitutes contempt of court. To establish contempt, the United States must show that "(1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner." Latino Officers Ass'n of the City of New York v. City of New York, 558 F.3d 159, 164 (2d Cir. 2009). These standards are readily met here. First, the May 3 Order adopted the Monitor's clear direction, and the County was obliged to comply immediately. With the denial of the stay applications, the Court's order on August 10, 2012, set an explicit deadline of August 17, 2012, for a presentation regarding precisely how the County would comply immediately. Second, the proof of noncompliance is clear and convincing because your letter of August 17, 2012, advises that the County will do nothing to comply until an indefinite date in the future, effectively granting itself the stay that two courts have denied. Third, the County has plainly not been diligent—to the contrary, your letter of August 17, 2012, states that the County will continue to do nothing to satisfy an obligation that it agreed to perform over

three years ago. Thus the County's noncompliance with the May 3 Order constitutes contempt. See United States v. Spallone, 493 U.S. 265, 276–80 (1990) (approving district court's contempt fines against City of Yonkers).

Accordingly, the County's August 17 letter is unacceptable. Please advise us immediately as to your availability for a telephonic conference on Friday, August 24, 2012, so that the County can revise its plan of compliance or to set a briefing schedule for a contempt motion.

Thank you for your prompt attention to this matter.

Sincerely,

PREET BHARARA
United States Attorney for the
Southern District of New York

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