

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

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In re: :

HMCA (CAROLINA), INC. : BK No. 90-03402 (ANV)  
Debtor Chapter 11

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In re: :

HMCA (PR), INC. : BK No. 90-03403 (ANV)  
Debtor Chapter 11

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**ORDER FINDING PUERTO RICO DEPARTMENT OF HEALTH AGENTS  
IN FURTHER CONTEMPT, AND IMPOSING ADDITIONAL PERSONAL  
SANCTIONS**

A recital of the later travel of this case is helpful to readers who have not been living with it since 1990 and is set out in my September 27, 2001 Opinion and Order Allowing Compensatory Sanctions, and Denying Debtors' Request for Punitive Sanctions, attached hereto as Exhibit A. On February 12, 2003, this Court issued an Order to Show Cause requiring the Puerto Rico Department of Health (DOH) and its agents and attorneys to explain why they should not be held in further contempt, and why additional sanctions of \$150 per day should not be imposed on account of their disregard of this Court's prior orders. See Exhibit C. To the present show cause order we have received one written response, which appears to be yet

another attempt at delay and obfuscation, as DOH attorney Jean Philip Gauthier, Esq., (and his presumably equally culpable colleagues, known and unknown to the Court), continue to pretend to not understand that the monetary sanctions imposed herein are levied against the *actual people at fault*, and not against the government's coffers. The Court's enforcement efforts, until now completely impotent and fruitless, are absolutely necessary to at least acquaint the DOH decision makers, with the differences between ethical right and wrong,<sup>1</sup> and to prevent them from causing further insult by having the taxpayers pay the fines of the contemnors, in addition to their salaries. *Williams v. United States (In Re Williams)*, 215 B.R. 289, 300 (D.R.I. 1997), *appeal dismissed*, 156 F.3d 86 (1<sup>st</sup> Cir.), *reh'g denied*, 158 F.3d 50 (1<sup>st</sup> Cir. 1998), *cert. denied*, 252 U.S. 1123 (1999) ("Allegations of bad faith government misconduct necessarily implicates the conduct of the government actors involved, and there is nothing novel in sanctioning attorneys personally for discovery abuse."); *see also United States v. Horn*, 29 F.3d 754, 766-67 (1<sup>st</sup> Cir. 1994) (Neither sovereign

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<sup>1</sup> In this case the people making and executing such decisions have been oblivious to such distinctions.

immunity nor separation of powers is a bar to personally sanctioning a government attorney).

To recap briefly, on September 28, 2001, judgment entered in the amount of \$9,050, jointly and severally, against the DOH, *and its attorneys and agents*, pursuant to this Court's September 27, 2001, Opinion and Order Allowing Compensatory Sanctions for conduct deemed to be very unprofessional. Said Order is attached as Exhibit A. Thereafter, Attorney Gauthier sought reconsideration of said Order on the ground "that he was not personally culpable." On February 25, 2002, Gauthier's Motion to Reconsider was denied, with the reminder that:

Implicit herein is the requirement that the guilty party(ies) pay the sanction(s) personally, and that they may not apply for reimbursement from the Commonwealth. To have any meaning, these sanctions must be paid by the wrongdoers, and not simply passed on to taxpayers. ...

Closure of this matter is long overdue, and the respondents are forewarned that further delay will likely result in the imposition of additional sanctions.

Order Denying Motion to Reconsider, February 25, 2002, Document No. 659, at 2-3 (citations omitted). Said Order is attached as Exhibit B. Neither the September nor the February Orders were appealed, they are final orders, and both have been totally

ignored. So on February 12, 2003, I issued an Order to Show Cause requiring the DOH, its attorneys and agents to show cause why additional sanctions of \$150 per day should not be imposed for their cavalier and contemptuous conduct throughout the pendency of this case. Said Order is attached as Exhibit C. Written responses to the Order to Show Cause were due on or before February 28, 2003, and again the only response was by Attorney Gauthier, who again ignores the issue of personal liability, saying:

2. Upon the Court reiterating its order, in July 2002, the undersigned coordinated a meeting with attorney Omar Cancio and the legal Affairs Director of the Department of Health (DOH), Mayra Maldonado, to discuss the order entered and the manner in which the same was to be complied with. In said meeting, attorney Maldonado set forth that upon considering the case and the order handed down, *the DOH was to pay the monies in accordance with the September 28<sup>th</sup>, 2001 order.* (Emphasis added.)

3. Upon the DOH determining to pay the sanctions as ordered by this Court, the undersigned attorney has contacted both the legal department of the DOH and attorney Omar Cancio to follow up on the payment of the sanctions imposed, to which the subscribing counsel has been indicated that there is a bureaucratic logistical difficulty which prevents the issuance of the check to the debtor.

4. That once the undersigned received a copy of the order to show cause filed and entered by the Honorable Court on the 12<sup>th</sup> of February, 2003, the subscribing

counsel has attempted unsuccessfully to coordinate a meeting with the DOH and attorney Cancio to discuss the issuance of the check to the debtor.

Motion in Compliance With Order to Show Cause, Doc. #662.

In his papers, Attorney Gauthier continues to disregard the fact that he and his colleagues owe these sanctions personally. This unfathomable refusal by the respondents to acknowledge clear and repeated orders continues to make a mockery of the system.

Based on the entire record in this case which is replete with improper actions by a DOH which disgraces the Commonwealth by its autocratic and unprofessional conduct,<sup>2</sup> and which demeans the healthcare users, I find that the respondents have again failed to show why they should not be adjudged in further contempt, and ORDER that additional sanctions of \$150 per day be imposed against the various Director(s) and employees of the DOH who have perpetrated the things complained of since March 20, 1997. Because these are the only names we have, Mayra Maldonado, Esq., Jean Philip Gauthier, Esq., and Omar Cancio

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<sup>2</sup> For example, arbitrarily and wrongfully withholding funding from this hospital at the whim of its directors, who knowingly put sick people at risk. See *In re HMCA (Carolina), Inc. & HMCA (P.R.), Inc.*, BK Nos. 90-03402 & 90-03403 (Bankr. D. Puerto Rico, June 24, 1991).

Martinez, Esq.,<sup>3</sup> are liable jointly and severally, beginning March 27, 2002,<sup>4</sup> for each day that the original \$9,050 sanction ordered on September 28, 2001, remains unpaid.

Finally, the DOH and its attorneys and agents are forewarned that, contrary to our prior less aggressive treatment to which they have apparently become accustomed, for any future transgressions, proposed findings of fact and conclusions of law pursuant to 28 U.S.C. § 157(c)(1) will be issued, with our recommendation to the District Court that the contemnors be held in criminal contempt, with all of the attendant consequences. See *In re Negro*, 1996 WL 277967 (Bankr. D.R.I. 1996), where the respondent was incarcerated by order of the District Court.

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<sup>3</sup> As for unknown individuals involved, it is and has been the obligation of DOH insiders to disclose who they are, but the known actors have failed to identify other participants responsible for the misconduct that has generated all this litigation. Therefore, the above-named individuals are deemed personally responsible for monetary sanctions, which at present total \$67,350, and counting. To encourage the penetration of this ongoing conspiracy of silence, the respondents are reminded that increasing the size of the known responsible person pool will reduce the pro rata financial burden of each of them, i.e., whistle blowing may work to one's advantage here.

<sup>4</sup> Instead of going back to the original date of judgment, I chose the more conservative date of thirty days after entry of the order denying Attorney Gauthier's motion to reconsider (Document No. 659).

BK No. 90-03402; BK No. 90-03403

Dated at Providence, Rhode Island, this 19<sup>th</sup> day of  
June, 2003.

A handwritten signature in black ink, reading "Arthur N. Votolato". The signature is written in a cursive style and is positioned above a horizontal line.

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Arthur N. Votolato  
U.S. Bankruptcy Judge\*

\*Of the District of Rhode Island, sitting by designation.