

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

- - - - -x
In re: :

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

- - - - -x
In re: :

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

- - - - -x

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

A recital of the later travel of what has become a judicial embarrassment, is helpful to readers who have not been living with the case since 1990, and is set out in our September 27, 2001 Opinion and Order Allowing Compensatory Sanctions, etc. See Exhibit A. That Order was neither responded to nor complied with, so on February 12, 2003, we ordered the Puerto Rico Department of Health (DOH) agents and attorneys to show cause why they should not be held in further contempt, and why additional sanctions of \$150 per day should not be imposed because of their repeated failure to comply with valid prior Court 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 counsel Jean Philip Gauthier, Esq., continues to pretend not to understand

that the sanctions in question were levied personally against him and his colleagues, and *not* against the government's coffers. See *Williams v. United States (In Re Williams)*, 215 B.R. 289, 300 (D.R.I. 1997), *appeal dismissed*, 156 F.3d 86 (1st Cir.), *reh'g denied*, 158 F.3d 50 (1st 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 (1st Cir. 1994) (Neither sovereign immunity nor separation of powers is a bar to personally sanctioning a government attorney). Based on what has gone on in this case to date, the enforcement of personal sanctions is absolutely necessary to acquaint DOH employees and agents with the differences between legal/ethical right and wrong,¹ and to discourage them from further insulting taxpayers

¹ During the course of these proceedings the government decision makers have either been oblivious to such distinctions, or have chosen to ignore them. Over time, it has become obvious that it is the latter.

by their persistence in seeking to have the public pay their fines, as well as their salaries.

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. See Exhibit A. Mr. Gauthier sought relief from said Order, and on February 25, 2002, his Motion to Reconsider was denied, with the admonition:

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). See Exhibit B. Neither the September nor the February Orders were appealed, and they are final orders. Both Orders were ignored, so on February 12, 2003, I issued yet another Order for the DOH attorneys and agents to show cause why additional sanctions of \$150 per day

should not be imposed for their cavalier disregard of Court orders throughout the pendency of this case. See Exhibit C. Written responses to said Order were due on or before February 28, 2003, and again the only response was by Mr. Gauthier, who again evaded 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 28th, 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 12th 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, Document No. 662.

In his papers, Gauthier continues to sidestep the fact that he and his colleagues owe these sanctions *personally*. This shameless refusal by the respondents to acknowledge their personal liability trivializes any regard they may have had for their oaths, and their ethical obligations as officers of the Court.

Based on the entire record in this case, which is replete with government impropriety, by agents who disgrace the Commonwealth by their autocratic and unprofessional action,² and which demeans the users of the healthcare system, I find that the respondents have failed to show why they should not again be adjudged in contempt, and ORDER that additional sanctions of \$150 per day be imposed against them. Because these are the only names we presently have, Mayra Maldonado, Esq., Jean Philip Gauthier, Esq., and Omar Cancio Martinez, Esq.,³ are ORDERED

² For example, the arbitrary and wrongful withholding of funding from this hospital by DOH agents who recklessly increased the vulnerability of sick people already 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).

³ As for other responsible individuals, 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 in the misconduct that has generated all this litigation. Therefore,

jointly and severally to pay \$150 per day, since March 27, 2002,⁴ for each day that the original \$9,050 sanction ordered on September 28, 2001, remains unpaid.

Finally, the respondents are forewarned that, contrary to the prior latitude to which they have apparently become accustomed, for any further transgressions proposed findings of fact and conclusions of law pursuant to 28 U.S.C. § 157(c)(1) will be issued and transmitted to the District Court with our recommendation 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)(respondent was incarcerated by order of the District Court on account of his ongoing contemptuous conduct).⁵

the above-named individuals are deemed personally responsible for monetary sanctions, which at present total \$67,350, and counting. To hopefully penetrate this ongoing conspiracy of silence, the respondents are reminded of the obvious, i.e., that increasing the size of the known responsible person pool should reduce the pro rata financial burden of each of them.

⁴ Instead of going back to the date of the judgment, we have selected the more conservative date of thirty days after entry of the order denying Gauthier's motion to reconsider (Document No. 659).

⁵ The foregoing Opinion and Order was ready for filing and would have been signed on June 19, 2003, but for the disclosure

POSTSCRIPT

After the foregoing opinion was finalized and after it was delivered for filing with the Bankruptcy Court in Puerto Rico, this Court heard for the first time that on or about March 31, 2003, \$9,050 had been provided by the DOH to Omar Cancio, who then delivered the money to Debtors' counsel, Pedro Jimenez, Esq. This ostensible compliance is a brazen extension of the ludicrous games the respondents continue to play. On July 24, 2003, during a (recorded) telephonic hearing to determine, inter alia, the source of the payment, Attorney Cancio confirmed that this Court was not informed of the payment, and that the sanction had in fact been paid by the DOH. Inexplicably, Cancio also stated that "the DOH decided to pay the funds to satisfy the Court order, but it had every intention of pursuing the individual responsible," namely one Cruz Arroyo, "because Mr. Arroyo's bad deeds extend far beyond this case and that the DOH would just add this to its list."

This highly questionable revelation does not even approach compliance with any of our prior orders, and still shows

of the information discussed in this postscript.

defiance of the explicit requirement that sanctions must be paid by the responsible individuals, and not by the government. At the conclusion of the hearing, Attorney Pedro Jimenez was ordered to hold the funds until further order, and to conduct discovery to determine the identity of all others involved in this debacle. If Cruz Arroyo, Esq., is in fact the only person responsible, as now alleged by Mr. Cancio, that will need to be established formally, and with more credibility than what was presented on July 24, 2003.

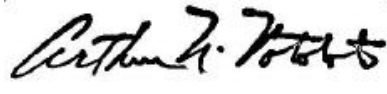
Based on the present record, the foregoing Order is amended as follows: Since the respondents have failed to show cause why additional sanctions of \$150 per day should not be imposed, said sanction is added to the prior assessments and shall be calculated from February 12, 2003, the day of the Show Cause Order, until March 31, 2003, the day the \$9,050 was paid by the DOH. Within ten days from the date hereof, the individual respondents are ORDERED, jointly and severally, to *personally* pay \$9,050 and the additional sanction of \$7,050,⁶ to Pedro

⁶ While the above sanction is significantly less than the \$67,000 one imposed in the original order, see footnote 3 *supra*, it comes after our sua sponte recognition that additional sanctions should run from the February 12, 2003 Order to Show

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

Jimenez, Esq., to be held by him until further order as to how the funds should be disbursed. Just in case it still isn't clear to them, the individual respondents are ORDERED not to seek or accept reimbursement from any agency of the Commonwealth of Puerto Rico. If the \$9,050 and the \$7,050 sanctions are not timely (within ten days) paid, then \$500 will be added for each day that the instant order remains unsatisfied and, as promised, the matter will be referred to the District Court for enforcement.

Dated at Providence, Rhode Island, this 4th day of December, 2003.



Arthur N. Votolato
U.S. Bankruptcy Judge*

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

Cause, wherein notice was clearly given as to the Court's intentions, should the actors persist in their errant ways.