

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

-----x

In re:

CUMBERLAND INVESTMENT
CORPORATION
Debtor

:

:

:

BK No. 89-11051
Chapter 11

-----x

ORDER

Heard on September 17, 1991 on the Court's Order to Show Cause why Harold Chorney and Gerald Aubin¹ should not be adjudged in contempt and sanctioned for their continuous, deliberate, and unjustified interference with the orderly progress of this bankruptcy case.

In prior proceedings we have found that Chorney has, inter alia, filed frivolous pleadings, willfully interfered with and obstructed the administration of the case, and generally and in bad faith abused the bankruptcy process, causing the estate and its creditors significant economic harm. See In re Cumberland Investment Corp., BK No. 89-11051, slip op. at 1-2 (Bankr. D.R.I. July 3, 1991). Our July 3, 1991 order, which precipitated the instant show cause hearing, clearly expressed the Court's exasperation with Mr. Chorney's conduct.

¹ Because the evidence presented at the September 17, 1991 hearing does not support a finding of contempt as to Gerald Aubin, we do not enter an order against him at this time. This is not to say that Mr. Aubin's pre and post-petition conduct (in concert with Chorney) does not deserve sanctions. Our ruling here only reflects the lack of such evidence at the September 17, 1991 hearing.

At the show cause hearing, the Trustee, John Cullen, Esq., described what was unfortunately an already too familiar pattern of obstructionist behavior by Mr. Chorney.² For example: he continued, post-petition, to advertise fraudulently after both agreeing to and being ordered to desist; to cure a glaring security problem, the Trustee moved for and obtained a Court order to physically eject Chorney from the Debtor's business premises (where he was actually living),³ after repeated broken promises to vacate;⁴ CIC records were allegedly concealed and/or destroyed; coin and other inventory values were grossly and fraudulently overstated to the Court, the Trustee, and to creditors; many frivolous pleadings were filed and extensively litigated, with the intent and effect of impeding the administration of an estate already left in shambles by Chorney; information concerning the identity of redemption coin holders was wrongfully withheld on the baseless

² As the result of the many pleadings and ensuing hearings both during and after the debtor-in-possession period, the Court was already acquainted with much of what the Trustee had to say, and we find his testimony to be accurate, but by no means all-inclusive of Chorney's legal and ethical transgressions. A more complete recital of Chorney's misbehavior throughout this case is chronicled in the case docket, annexed as Appendix A.

³ Chorney's apartment was literally surrounded by inventory, allowing a real-life "fox-guarding-the-chicken-coup" scenario. His bed was literally within inches of the vault and its contents.

⁴ The Court order was ignored, however, and the Trustee ended up, instead, moving the assets to another location, at a cost to the estate of approximately \$95,000.

ground of "confidentiality," even after disclosure was ordered by the Court, and so on.

The most damaging consequence of Chorney's incomprehensible behavior, however, is the incredible amount of needless expense that has been heaped upon the estate, and ultimately, of course, upon the creditors. The Trustee's and the Examiner's duties (and their fees and expenses) have been increased; secured creditors, long-delayed in exercising their rights, have seen the interest part of their claims escalate; and the likelihood of a meaningful distribution to hundreds of unsecured creditors and redemption coin holders has been practically eliminated. All of this waste has been caused unnecessarily by Harold Chorney.

The time records submitted by the Trustee, the Examiner, and Eastland Bank indicate that fees and expenses directly attributable only to the unnecessary litigation and/or extra-judicial work generated by Mr. Chorney, as of September 1991, total \$381,463, broken down as follows: Trustee - \$19,461.50;⁵ Counsel to Trustee and Examiner - \$20,905; Examiner - \$250,000; Eastland Bank - \$90,844. Based upon the entire record, which need not be

⁵ Although expense summaries submitted to the Court indicate the amount of \$19,713, our compilation of the entries submitted totals \$19,461.50.

recited here,⁶ we adjudge Harold Chorney to be in continuous, willful contempt, and order him to pay \$200,000 to the Trustee, as partial reimbursement for the deliberate post-petition damage he has done to creditors. Allowing Chorney the benefit of any possible doubt, the above-ordered sanction is a low-end estimate of the financial harm he has caused, and will not even begin to compensate creditors for behavior which seems designed by Chorney to bring everybody⁷ down with him, including former customers upon whom he had already inflicted great pre-petition financial harm.

Finally, our actions herein are purposefully crafted to be compensatory and not punitive in nature, and in that regard feel that we have ruled conservatively, and mindful of the District Court's recent discussion of the parameters of Bankruptcy Court authority in the areas of sanctions and civil contempt, in In re Microbiological Sciences, Inc., C.A. No. 91-0341 P, slip op. at 5 (D.R.I. October 8, 1991). See In re Power Recovery Systems, Inc., 950 F.2d 798, 802-03 (1st Cir. 1991) (bankruptcy courts clearly have civil contempt authority to compensate for losses sustained or to coerce compliance with court orders); see also In re Macwood,

⁶ For the details of Mr. Chorney's persistent efforts to stonewall these proceedings, see Appendix A.

⁷ Ironically it is the professionals in the case, against whom Mr. Chorney exhibits his most vehement hostility, who will ultimately benefit the most, financially, from his conduct.

785 F.2d 1077, 1081 (D.C. Cir. 1986); In re Kave, 760 F.2d 343, 351
(1st Cir. 1985).

Enter Judgment consistent with this opinion.

Dated at Providence, Rhode Island, this 2nd day of
July, 1992.



Arthur N. Votolato
U.S. Bankruptcy Judge