

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASE NO. 5:09cv359/RS-MD

**EVELYN JOHNSTON,
BLAINE JOHNSTON, and
ABACO EXECUTIVE SERVICES,
INC.,**

Defendants.

ORDER

Before me is Plaintiff's second motion for civil contempt (Doc. 51).

In a civil contempt proceeding, the petitioning party bears the burden of establishing by clear and convincing proof that the underlying order was violated.

Howard Johnson Co., Inc. v. Khimani, 892 F.2d 1512, 1516 (11th Cir. 1990).

Once the moving party makes a prima facie showing that the court order was violated, the burden of production shifts to the alleged contemnor to rebut this conclusion or provide an explanation for noncompliance. *Id.*

Plaintiff presented clear and convincing evidence by affidavits that Defendants had filed at least twenty-one tax returns with the IRS without prior approval from the monitor, in violation of the preliminary injunction agreed upon

the by the parties (Doc. 36). A hearing was held on June 4, 2010. Defendants were present at the hearing but provided no explanation for the filing of the twenty-one tax returns without clearance of the monitor. The only evidence presented by Defendants was the testimony of Defendant Blaine Johnston, which did not address the substance of Plaintiff's allegations. To the extent that his testimony indirectly addressed the allegations, it was vague and not credible. Defendant Evelyn Johnston, the principal of Defendant Abaco Executive Services, was present at the hearing but did not testify.

Defendants failed to substantively address the violations raised by Plaintiff, or provide any explanation for their noncompliance with the preliminary injunction. I therefore find all Defendants in contempt for violating the preliminary injunction by filing twenty-one tax returns with the IRS prior to receiving the approval of the monitor.

IT IS ORDERED:

1. Defendants shall pay a \$1,000 fine for each of the twenty-one tax returns filed without clearance from the monitor. The \$21,000 fine shall be paid in full to the Court not later than June 18, 2010, at 4:00 P.M. CST.

ORDERED on June 4, 2010.

/s/ Richard Smoak
RICHARD SMOAK
UNITED STATES DISTRICT JUDGE