

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE

**CAMBRIAN HOLDING COMPANY,
INC., ET AL.**

CASE NO. 19-51200

DEBTORS

JOINTLY ADMINISTERED

CONTEMPT ORDER

The Pristine Parties have a long history of ignoring their obligations to the Debtors' Estates and disregarding this Court's Orders. [See ECF No. 1827.] Their continuing refusal to follow the Court's rulings compelling compliance and issuing sanctions requires a firm response.

The record supports a *prima facie* case of contempt of the Mediated Agreed Order [ECF No. 1480], the June 25, 2021 Order [ECF No. 1809], and the August 20, 2021 Order [ECF No. 1827] by clear and convincing evidence. These Orders were clear and specifically stated the obligations due. *See Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998); *In re Brown*, Case No. 12-70013, 2013 WL 5493213, at *3 (Bankr. E.D. Ky. Oct. 2, 2013). Further, the Mediated Agreed Order and the June 25 Order incorporated the agreements and suggestions of the Pristine Parties. *Id.*

The Pristine Parties, through counsel and William Abraham, identified a source of funds available to make the July 8, 2021, payment required by the June 25 Order. [ECF No. 1805.] Counsel admitted at the August 19 hearing, however, that they used the funds to pay other obligations because the sanction was not enough to induce performance. [ECF No. 1830.] Additional sanctions were imposed against the Pristine Parties, and sanctions were imposed

against the representatives that appeared at the June 24 hearing, Abraham and Dimini Sharma. [ECF No. 1827; *see also* ECF No. 1524 (the record confirms Abraham's authority to act on the Pristine Parties' behalf).] They were also ordered to appear and show cause why more severe sanctions were not required at a hearing on August 27, 2021. [ECF No. 1827.]

The Pristine Parties, through counsel, and Sharma attended the August 27 hearing. [ECF Nos. 1833, 1834.] Counsel represented that Abraham had serious health issues that prevented travel. Counsel also explained that Sharma was a potential purchaser of assets and performed consulting work, helping with coal sales and obtaining new permits. But Sharma does not have authority to direct payments.

The Pristine Parties acknowledged their failure to make the payments required by the Mediated Agreed Order, the June 25 Order, and the August 20 Order at the August 27 hearing. [ECF No. 1830.] They also conceded the accuracy of the August 20 Order that recited the history of their past failure to comply with orders and the current problems.¹ Counsel's arguments were proffered and accepted as testimony from Sharma.

The proffered evidence and the record confirms the continuing willful contempt of Court orders by clear and convincing evidence, so sanctions remain appropriate to induce performance and protect the integrity of the Court. But there is also some movement that suggests the most severe sanctions are not yet required. Counsel for the Pristine Parties represented he received approximately \$160,000.00 in his escrow account overnight that would pay a portion of the \$310,000.00 due to the Liquidating Trustee by the August 27 hearing. Also, there are additional sources of funding expected soon.

¹ Counsel raised a concern that the Court's findings in the August 20 Order overlapped with the non-compliance of other purchasers that are also his clients. The record described in the August 20 Order relates only to the Pristine Parties' non-compliance. [ECF No. 1827.] Compliance issues involving other purchasers were not and are not considered in issuing sanctions against the Pristine Parties, Abraham, or Sharma.

Based on the foregoing, it is ORDERED:

(1) The Pristine Parties and William Abraham remain in CONTEMPT of the Mediated Agreed Order and the June 25 Order and are in CONTEMPT of the August 20 Order.

(2) Counsel for the Pristine Parties shall immediately wire the funds received from the Pristine Parties to the Liquidating Trustee as partial payment of the \$310,000.00 due pursuant to the August 20 Order.

(3) The August 20 Order is MODIFIED as follows:

- a. The accruing sanctions of \$2,000.00 per day for the Pristine Parties' non-compliance shall continue through and including September 3, 2021. If a total of \$310,000.00 is not paid to the Liquidating Trustee by September 3, then the sanctions assessed against the Pristine Parties shall increase to \$5,000.00 per day of non-compliance, and shall double each week thereafter, pending further Orders of the Court;
- b. The accruing sanctions of \$500.00 per day for William Abraham's non-compliance shall continue through and including September 3, 2021. If a total of \$310,000.00 is not paid to the Liquidating Trustee by September 3, then the sanctions assessed against William Abraham shall increase to \$1,000.00 per day of non-compliance pending further Orders of the Court; and
- c. Accrued and accruing sanctions assessed against Dimini Sharma in the August 20 Order are waived and terminated.

(4) William Abraham shall provide evidence that justifies his absence from the August 27 hearing and failure to inform the Court in advance **on or before September 1, 2021**.

A failure to timely supplement the record with acceptable proof may result in the issuance of a bench warrant to compel Abraham's appearance.

(5) This matter is continued to **9:00 a.m. on September 23, 2021, in the U.S. Bankruptcy Court, Second Floor Courtroom, 100 E. Vine Street, Lexington, Kentucky.**

The hearing will consider more severe sanctions if the payment to the Liquidating Trust is not made, or a modification of the sanctions if the payment has occurred. Parties are directed to review the "Clerk's Notice Re: Resumption of On Site Hearings," which is posted at

<https://www.kyeb.uscourts.gov/news/resumption-site-hearings>.

(6) William Abraham is required to attend the September 23 in person hearing unless prior approval is requested and granted.

The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:
Gregory R. Schaaf
Bankruptcy Judge
Dated: Monday, August 30, 2021
(grs)