

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARKS & SOKOLOV, LLC : **CIVIL ACTION**
 :
 v. : **NO. 13-cv-3152**
 :
 SHAHROKH MIRESKANDARI, et al. :

ORDER

AND NOW, this 3rd day of May, 2018,

WHEREAS, after the Court of Appeals for the Third Circuit affirmed the Judgments of this Court, Plaintiff’s counsel requested that the Court restore the following three motions to the active docket: Motion to Compel Defendant Paul Baxendale-Walker (“PBW”) to produce documents in aid of execution [ECF 91], Motion for Contempt against The Chartwell Law Offices, LLP (“Chartwell”) [ECF 92] and Motion for Contempt of the Court’s July 27, 2015 Order for Contempt [ECF108],

WHEREAS, by Order dated October 5, 2017 [ECF 169], the Court directed Plaintiff to submit updated proposed orders for the relief it seeks for all three motions by October 20, 2017, and that any responses to the proposed orders should be filed by October 27, 2017,

WHEREAS, when the Court did not receive any responses from PBW or Chartwell by October 27, 2017, it granted by Orders dated November 6, 2017 [ECF 173, 174, 175] the three motions as unopposed, including the motion to hold Chartwell

in contempt and for Chartwell to produce full and complete copies of all documents requested in the subpoena within 5 days or suffer sanctions of \$250 per day for non-compliance and for Chartwell to pay Plaintiff \$1250 for its costs and attorneys' fees related to bringing the motion

WHEREAS, Kenneth M. Dubrow, Esquire ("Dubrow") of Chartwell promptly responded to the contempt Order by means of a letter motion for reconsideration on November 15, 2017 [Doc. 176],

it is hereby **ORDERED** that the Court's previous Order granting Plaintiff's Motion for Contempt against Chartwell for failing to comply with Plaintiff's subpoena for the production of documents in aid of execution [Doc. 174] is **VACATED** in its entirety for the following reasons:

1. Chartwell represented the Defendants for only a six month period from December 10, 2014 until June 17, 2015. Dubrow filed his notice of withdrawal for Chartwell on behalf of the Defendants on June 17, 2015 [ECF 72.]
2. Before withdrawing as counsel for Defendants, Chartwell was served with a subpoena by counsel for Plaintiff on May 29, 2015 which sought, *inter alia*, e-mails, medical records and other written correspondence exchanged between Defendant PBW and Chartwell relating to Plaintiff's motion to hold PBW in contempt for failing to respond to discovery in aid of execution.
3. Upon receiving the subpoena, Dubrow informed Plaintiff's counsel that the Defendants were in the process of retaining new counsel. Therefore, Dubrow negotiated with Plaintiff's counsel an extension of time until June 24, 2015 by which Dubrow was to comply with the subpoena.

4. In response to the June 24, 2015 deadline, Dubrow drafted a letter to Plaintiff's counsel, identifying the documents in Dubrow's possession together with a privilege log based on attorney-client privilege.
5. However, after entering his appearance for PBW on June 17, 2015 [ECF 71], Mathieu J. Shapiro, Esq. ("Shapiro") of Obermayer Rebmann Maxwell & Hippel, LLP instructed Dubrow not to send the letter, advising that Shapiro as new counsel would take up the matter with Plaintiff's counsel.
6. Indeed, in a letter to the Court dated June 23, 2015, Shapiro wrote, in pertinent part::

I include within that category a Subpoena issued to my clients' former counsel, Kenneth M. Dubrow, Esq, which has a current due date of Wednesday, June 24, 2015. Mr. Dubrow was prepared to respond to the subpoena by producing a privilege log. I wish for the Court and [plaintiff's counsel] to know that I have directed Mr. Dubrow not to respond, at least until I have had a chance to review the documents, the log and the issues, to determine whether either Mr. Mireskandari or Mr. Baxendale-Walker intends to assert the privilege or to file a motion to quash.

(ECF 97-2).

7. Subsequently, Dubrow was again informed by Shapiro and Plaintiff's counsel that they were attempting to resolve the privilege issues and that Dubrow was to not to take any further action. Accordingly, Dubrow did not file a motion for a protective order by June 24, 2015.
8. Neither Plaintiff's counsel nor Shapiro informed Dubrow of their attempts to resolve the privilege issues.

9. Instead, on August 14, 2015, Plaintiff's counsel filed a motion to hold Chartwell in contempt for failing to respond to the May 29, 2015 Subpoena. (ECF 92.)
10. By letter dated August 19, 2015 addressed to Plaintiff's counsel, Dubrow responded to the May 29, 2015 Subpoena by identifying the documents withheld and the applicable privileges asserted. Dubrow also produced a copy of Dr. Farzam's declaration which Dubrow contended was the only non-privileged document responsive to the subpoena. [ECF 97-3.]
11. Nevertheless, by letter dated August 19, 2015 to Dubrow, Plaintiff's counsel insisted that all responsive documents, including those subject to privilege be produced.
12. Shapiro again instructed Dubrow not to release any privileged documents and stated that the issue of privilege would be taken up by Shapiro and Plaintiff's counsel.
13. On August 25, 2015, Dubrow filed a response to Plaintiff's motion to hold Chartwell in contempt [ECF 97.]
14. By this time, Dubrow claims he had supplied all of the privileged documents together with the remainder of the file to Shapiro.
15. The Court finds that Chartwell did not intentionally withhold documents or intentionally refuse to comply with Plaintiff's subpoena. To the contrary, Chartwell was ready and willing to timely comply with the May 29, 2015 Subpoena by letter to Plaintiff's counsel, identifying the

documents in Dubrow's possession together with a privilege log based on attorney-client privilege until he was repeatedly instructed by Shapiro not to do so. Neither Plaintiff's counsel nor Shapiro ever advised Dubrow if they had reached an agreement on the privilege issues. Instead, Dubrow was served by Plaintiff's counsel with a motion to find Chartwell in contempt for failing to comply with the May 29, 2015 Subpoena. On August 25, 2015, Dubrow promptly filed a response to the motion for contempt and ultimately complied with the May 29, 2015 Subpoena on August 19, 2015. Under the circumstances, that was all Chartwell was required to do.

BY THE COURT:

/S/ Jeffrey L. Schmehl

JEFFREY L. SCHMEHL, J.