

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DANIELS SHARPSMART, INC.,)	CASE NO. 1:15-cv-02234-DAP
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>ORDER</u>
)	
COMPREHENSIVE WASTE STREAM,)	
CONSULTING LLC, et al.,)	
)	
Defendants.)	

I. Background

On June 7, 2016, Gary McDermott failed to appear for a Case Management Conference (“CMC”).¹ Gary McDermott was ordered to appear on June 8 for a hearing to show cause why he should not be held in contempt. The Court further ordered, “if Gary McDermott acted under advice of counsel in failing to appear for the Case Management Conference, that attorney is also ordered to appear.” Case Management Conference Minutes, Show Cause Order, and Order 3, Doc #: 20.

On June 8, 2016, Gary McDermott appeared, without the attorney who advised him not to

¹ At that time, Gary McDermott was a named plaintiff in the above-captioned case. He has since been dismissed.

attend the CMC. Gary McDermott testified under oath that attorney John McDermott, his brother, had advised him he need not attend the CMC, but instead that he should meet with John McDermott to discuss an unrelated IRS matter. Gary McDermott further testified that he had notified John McDermott of the Court's order for the attorney to appear. After the hearing, the Court issued an order directing John McDermott to appear on June 9, 2016. Doc #: 21. The June 9 Order was faxed to John McDermott. Later on June 9, John McDermott responded by letter and informed the Court he would not be appearing. Doc #: 22. The Court responded by letter and stated that the Order would stand. Doc #: 22-1.

On June 9, 2016, the Court held a hearing. John McDermott did not appear, and the Court held John McDermott in contempt. The Court then issued an Arrest Warrant for John McDermott. Doc #: 23.

II. Contempt

Gary McDermott's testimony revealed that John McDermott, Esq. inserted himself in the above-captioned case when he told Gary McDermott not to appear as directed. John McDermott did not ask Gary McDermott's local counsel to file a motion to excuse appearance, nor did he contact chambers directly. Rather, the available evidence indicates John McDermott took it upon himself to instruct Gary McDermott that the meeting in his office to discuss an unrelated IRS dispute took precedence over a mandatory appearance in federal court. When John McDermott so inserted himself into the above-captioned case, he subjected himself to the Court's jurisdiction.

The Court's order have been clear, John McDermott had knowledge of the two orders directing his appearance on June 8 and 9, and he has violated those orders. Accordingly, on June

9, the Court held John McDermott in contempt for failing to appear as ordered.

III. Remedy

The purpose of the Court's civil contempt order—and the consequent Arrest Warrant—was to compel or coerce John McDermott's compliance with the Court's order to appear and give testimony as ordered. However, given John McDermott's ongoing failure to appear, and the low likelihood that John McDermott will come to Ohio in the foreseeable future, the civil bench warrant is rendered largely ineffective.

Thus, the Court imposes a fine of \$500.00 per day, to begin immediately, until such time as John McDermott appears before the Court, as ordered. This daily fine will continue to accrue until John McDermott appears and will terminate upon John McDermott's appearance.

The Court RECALLS the warrant against John McDermott, Doc #: 23.

IT IS SO ORDERED.

/s/ Dan A. Polster June 15, 2016
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE