IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI

In re:	§	**Case No. 16-45366-705**
	§	
Michele and Donald Sears,	§	**Chapter 7**
	§	
Debtors.	§	

BENCH WARRANT
FOR THE ATTACHMENT OF THE BODIES OF AND THE ARREST OF
JAMES C. ROBINSON AND BEVERLY HOLMES DILTZ

For reasons set forth herein, the Court **ISSUES** this Bench Warrant and **ORDERS** the attachment of the bodies of and the arrest of **JAMES C. ROBINSON** and **BEVERLY HOLMES DILTZ**.

I. FACTUAL BACKGROUND

Until recently, Beverly Holmes Diltz—a non-attorney and a convicted felon—was the sole owner of the notorious "bankruptcy services" rip-off operation known as "Critique Services" (the "Critique Services Business").[1] Operating the Critique Services Business through her various "Critique"-named entities such as Critique Services L.L.C., Diltz targeted primarily working poor, minority citizens of St. Louis for almost two decades with her phony promises of bankruptcy legal services. James C. Robinson was one of the attorneys who participated in Diltz's Critique Services Business scam.

A thorough history of the Critique Services Business is set forth in the 250-page order entered by this Court on April 20, 2016 Order in the matter of *In re Evette Nicole Reed, et al.* (the "*Reed* Order"[2]). For purposes here, it suffices to

[1] The Critique Services Business was finally shut down over the past year as a result of a series of federal and state court orders enjoining its affiliated persons and operations.

[2] Critique Services L.L.C. and James C. Robinson were both found to be in contempt in the *Reed* Order. Robinson did not appeal the *Reed* Order. Critique Services L.L.C. appealed the *Reed* Order to the U.S. District Court. January 3, 2017, the District Court affirmed in total. Thereafter, Critique Services L.L.C. abandoned further appeal efforts. The only remaining appellant of the *Reed* Order is another bad-actor Critique Services Business attorney, Ross H. Briggs,

summarize the Critique Services Business as described below.

Diltz and her Critique Services Business victimized prospective debtors by falsely promising to provide them with bankruptcy "legal" services at bargain-basement prices, in exchange for an up-front, all-cash payment. However, after pocketing the cash, the business provided no meaningful legal services. The attorneys affiliated with the business were not involved in legal decisions or case preparation. Instead, grossly unqualified non-attorney staff persons collected the money, gave "legal" advice, and prepared shoddy (and often false) bankruptcy petition papers.

Client abandonment and abuse was the backbone of the Critique Services Business's business plan. It frequently took months for the client's case to be filed—*if* the case was ever filed. When desperate clients called, pleading for their attorney to help them with their case, the non-attorney staff persons would refuse to allow the client access to an attorney. Clients were mislead about the status of their cases; they were told that their paperwork was lost; they were made to pay bogus fees; they were lied to about dispositions in their cases; they were berated by non-attorney staff persons. The Critique Services Business attorneys failed to appear in court at contested matters. They abandoned clients at § 341 meetings. The litany of consistent unethical and unprofessional behavior showed that dishonesty and deception were standard operating procedures.

The Critique Services Business scam was no small affair. According to Court records, in 2013, the Critique Services Business raked in almost $800,000.00 a year in (reported) attorney's fees, and accounted for more than 8% of the bankruptcy cases filed in this District. Yet, despite all this cash flowing in and out of the business, the client fees were not held in client trust accounts, and the business did not file income tax returns in years, according to Diltz's own testimony at a July 2015 deposition of the United States Trustee.

The real business of the Critique Services Business was the unauthorized practice of law. To give her scam the cosmetic appearance of being a law

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who now serving his third suspension for malfeasance and unethical activities while being affiliated with Diltz and her business.

business, Diltz would contract with one or two ethically marginal attorneys. The job of these attorneys was not to provide any actual legal services. Their job was to rent-out their signatures and bar card numbers to Diltz and her business. Their signature blocks are affixed to the legal documents prepared by non-attorney staff persons. Often, the attorneys often never met the client, much less provided them with any legal advice. The attorneys operated, as the Court has noted in previous orders, as human rubberstamps.

Not surprisingly, over the years, every attorney—save one—who had ever been affiliated with the scam wound up sanctioned, suspended or disbarred for his or her activities with the Critique Services Business. This also was part of Diltz's business plan: to employ a series of disposable, fungible attorneys. When one attorney would, almost inevitably, be suspended or disbarred, Diltz would just replace him with another attorney, until that attorney, too, was suspended or disbarred—with the cycle repeating over and over. Robinson is one attorney in the long line of disgraced former Critique Services Business attorneys.

On June 10, 2014, the Court entered an order in *In re Latoya Steward* (the "*Steward* Order"[3]), suspending Robinson (purporting to be "d/b/a Critique Services L.L.C.") and his counsel, Elbert A. Walton, Jr., from practicing before this Court. In *In re Steward*, Robinson and Walton made false statements, refused to comply with Court orders, and committed contempt for nine months—all in a coordinated effort to avoid making lawful Court-ordered discovery related to the financial operations of the Critique Services Business. Robinson and Walton remain suspended by this Court to this day. In addition, after the Court referred their malfeasance to the Office of Chief Disciplinary Counsel for the Missouri Supreme Court (the "OCDC"), Robinson and Walton were both suspended from practice of law by the Missouri Supreme Court. They are currently serving their suspensions by the Missouri Supreme Court.

Diltz herself has been repeatedly enjoined both by this Court and the U.S. Bankruptcy Court for the Southern District of Illinois. Diltz has a lengthy history

[3] The *Steward* suspension order was affirmed by the U.S. District Court on March 31, 2015, and by the U.S. Court of Appeals for the Eighth Circuit on July 7, 2016.

of unlawful behavior that resulted in federal court injunctions. Most recently, in the *Reed* Order, the Court entered a permanent directive, prohibiting any attorney admitted to practice before the U.S. Bankruptcy Court for the Eastern District of Missouri from doing any sort of business with Diltz or her business. In addition, just a few weeks ago, Diltz agreed to a judgment in the matter of *Casamatta v. Critique Services L.L.C., et al.*, requiring her to pay significant amounts to settle the United States Trustee's lawsuit alleging violations of previous injunctions and the Bankruptcy Code. And within the past few months, Diltz agreed to a judgment to settle a civil action brought by the Office of the Missouri Attorney General, which had sued Diltz and various persons affiliated with the Critique Services Business on claims related to their fraudulent and deceptive trade practices. It should be noted, however, that neither of the recent settlements prevents other former clients of Diltz, the Critique Services Business, and its lawyers from seeking disgorgement of their fees.

II. FACTS OF THIS CASE

The evidence shows that between January and February 2016, the Debtors paid the Critique Services Business a total of $635.00 to have Robinson file their joint bankruptcy petition. (This retention of Robinson occurred more than a year after Robinson had been suspended from practicing bankruptcy law in this District. However, this comes as no surprise to the Court. As noted in the *Reed* Order, on several occasions after his suspension, Robinson was caught practicing bankruptcy law at the Critique Services Business—even masquerading under the name of another Critique Services Business attorney.) However, after no one at the Critique Services Business filed their case, the Debtors found other counsel. On July 28, 2016, their new counsel filed their Case.

On January 11, 2017, the Debtors, through their new counsel, filed a Motion to Disgorge, seeking disgorgement of the $635.00 paid at the Critique Services Business for Robinson's services. Robinson, Critique Services L.L.C., and Critique Services L.L.C.'s attorney (Laurence Mass) each received a copy of the Motion to Disgorge. No response to the Motion to Disgorge was filed.

On April 21, 2017, the Court entered an Order to Disgorge [Doc. No. 31],

finding the allegations in the Motion to Disgorge were uncontested and deeming them to be admitted, and granting the Motion to Disgorge. The Court ordered Critique Services L.L.C. and Robinson to disgorge the $635.00 in fees within ten days of entry of the order, and to file a Certificate of Compliance with a copy of the instrument transferring the fees attached. The Court also gave notice that, if the Order to Disgorge is not obeyed:

> the Court may impose monetary and/or non-monetary sanctions upon Robinson and/or Critique Services L.L.C. Such sanctions may include, but are not limited to, per-day fines for non-compliance, the referral to other authorities for additional discipline, and the issuance of a bench warrant. In the case of Critique Services L.L.C., any sanctions may be imposed upon Beverly Holmes Diltz, the sole owner of Critique Services L.L.C.

More than ten days have now passed since the entry of the Order to Disgorge. No Certificate of Compliance or other response has been filed.

III. ANALYSIS

Robinson and Critique Services L.L.C. are obligated to obey the Order to Disgorge, but have not met this obligation. They have not offered any excuse for their failure to obey. Accordingly, the Court **FINDS** that Robinson and Critique Services L.L.C. are in willful, unexcused contempt of the Order to Disgorge. Thus, the issue now before the Court is how to garner their obedience to the Order to Disgorge, given their willful, unexcused refusal to obey thus far.

Given Robinson and Critique Services L.L.C.'s long history of refusing to obey Court orders and employing contempt as a litigation strategy, the Court has no reason to believe that a politely insistent request or a "strongly worded" directive would garner Robinson's or Critique Services L.L.C.'s obedience to the Order to Disgorge. In addition, the behavior of Robinson and Critique Services L.L.C. in *In re Steward* and *In re Reed* demonstrates that monetary sanctions will not garner compliance; monetary sanctions mean nothing to persons who have no intent to ever pay them. Therefore, the Court must find some other mechanism for obtaining obedience.

Although the Court is usually willing to try almost any other lesser form of coercion before it resorts to incarceration, it also is unwilling to tolerate willful

contempt from persons who have an established history of using contempt as a litigation tool. The Court recognizes a metaphorical middle finger when it is given one, and it is not obligated to feign hope that a lesser form of coercion will garner obedience from Robinson and Critique Services L.L.C.

Accordingly, the Court concludes that the previous history of Robinson and Critique Services L.L.C.'s contempt for this Court and their current contempt for the Order to Disgorge makes incarceration an appropriate form of coercion under these circumstances. Moreover, the Court notes that the issuance of a bench warrant has been successfully employed in the past, when Robinson previously refused to comply with a lawful order to pay. In May 2015, the Court issued a bench warrant for the arrest of Robinson and Walton, after they refused to obey an order to post a bond pending appeal. It was only because Diltz posted the bond for them at the last minute that they were not arrested. That's what it took to get obedience to a Court order: the specific threat of arrest.

Incarceration is a civil sanction and not a criminal punishment when release is conditioned upon the contemnor's performance with his obligation. *Shillitani v. United States*, 384 U.S. 364, 369 (1966) (where incarceration was ordered of a witness who refused to testify, the U.S. Supreme Court reasoned that, "[w]hile any imprisonment, of course, has punitive and deterrent effects, it must be viewed as remedial if the court conditions release upon the contemnor's willingness to testify."). Incarceration of a civil contemnor does not convert the matter into a criminal contempt proceeding. *In re Spanish River Plaza Realty Co.*, *Ltd.*, 155 B.R. 249, 254 (Bankr. S.D. Fla. 1993). Persons incarcerated as a result of civil contempt "carry the keys of their prison in their own pockets." *In re Nevitt*, 117 F. 448, 461 (8th Cir. 1902); *see In re Hans Juerfen Falck*, 513 B.R. 617, 619 (Bankr. S.D. Fla. Jul. 25, 2014). That is, as soon as they comply with their legal obligation, they are released.

It is well-established law that the bankruptcy court has the power to impose sanctions for civil contempt to enforce compliance with its orders. It also is well-established law that the bankruptcy court has the power to sanction by incarceration to obtain compliance when a party is in civil contempt of an order.

And the facts here establish that incarceration is necessary and appropriate to garner compliance with the Order for Disgorgement, and that any lesser form of sanctions likely would be futile.

IV. PRIOR NOTICE TO ROBINSON, CRITIQUE SERVICES L.L.C. AND DILTZ OF THE POSSIBILITY OF THE ISSUANCE OF A BENCH WARRANT

In the Order to Disgorge, Robinson and Critique Services L.L.C. were given notice that their non-compliance with the Order to Disgorge may result in the issuance of monetary or non-monetary sanctions, including the issuance of a bench warrant. Further, in the Order to Disgorge, Diltz was given notice that any sanctions imposed upon Critique Services L.L.C. may be imposed on her personally, as the sole owner of Critique Services L.L.C. This bench warrant should come as a surprise to no one.

V. NOTICE REGARDING NECESSARY EVIDENCE, SHOULD A FINANCIAL INABILITY BE ALLEGED AS A BASIS FOR RELEASE FROM CUSTODY

"Coercion [by incarceration] is appropriate only when the person being coerced has the ability to pay." *In re Hans Juerfen Falck*, 513 B.R. at 619. Neither Robinson nor Diltz have alleged that they are financially unable to comply with the Order to Disgorge. However, should they make that claim in the future, the Court gives **NOTICE** that they will be required to establish such claim by *credible evidence* of their financial circumstances (of their respective assets, liabilities, recent tax returns, wages or other income, donations of cash or other things of value from friends and family, and other relevant material). Simply insisting that they are financially unable to comply with the Order to Disgorge will not suffice to establish their financial circumstances.

VI. DIRECTIVE TO THE U.S. MARSHALS TO ATTACH THE BODIES OF AND ARREST JAMES C. ROBINSON AND BEVERLY HOLMES DILTZ

The Court **ORDERS** the attachment of the bodies of and the arrest of **JAMES C. ROBINSON** and **BEVERLY HOLMES DILTZ**. Each is to be held in custody for the lesser of (i) thirty (30) days, or (ii) until (a) the Order to Disgorge is obeyed, or (b) other cause warranting release from custody is established.

VII. TERMS OF RELEASE

If compliance with the Order to Disgorge is met or other cause for release is established before the thirty (30) days has expired, the Court will promptly enter an order directing Robinson's and/or Diltz's release. Otherwise, the Court will hold a hearing promptly after the thirtieth day of incarceration, and direct that the bodies of Robinson and Diltz be produced to the Court for such hearing. At that hearing, the Court will determine the appropriate next step.

VIII. DIRECTIVE TO FILE A NOTICE

The Court **ORDERS** that, upon the compliance with the Order to Disgorge, Robinson or Diltz (i) file a Certificate of Compliance (with a copy of the instrument transferring the fees attached), and (ii) contact the undersigned Judge's law clerk, to advise of the filing of such Certificate of Compliance. Upon confirmation of the filing of the Certificate of Compliance, the Court will enter an order releasing Robinson and Diltz.

IX. STAY OF EFFECTIVENESS THROUGH MAY 18, 2017

The Court has many matters to address outside the seemingly endless bad behavior of persons associated with the Critique Services Business. And the Court is confident that the U.S. Marshals have better things to be doing with their valuable time than spending it chasing down these two contemptuous individuals. Accordingly, the Court **ORDERS** that the effectiveness of this Bench Warrant be **STAYED** through May 18, 2017, in the hope that Robinson and Diltz will comply with the Order to Disgorge to avoid incarceration. However, the Court will state this in unequivocal terms: ***if the compliance with the Order to Disgorge is not met in full by May 18, 2017, this Bench Warrant will become effective on May 19, 2017, and it will be delivered to the U.S. Marshals for execution.***

Charles E. Rendlen III
CHARLES E. RENDLEN, III
U. S. Bankruptcy Judge

DATED: May 11, 2017
St. Louis, Missouri
DSB

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