

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ANDREW R. OSSEWAARDE and) CASE NO. 07-22306 JPK
HEATHER A. OSSEWAARDE,) Chapter 7
)
Debtors.)

ORDER FOR HEARING

On September 23, 2008, Stacia L. Yoon, Trustee, filed a "Motion for Rule to Show Cause" which requests that the court enter an order compelling "the Metropolitan Title Company" to appear before the court to show cause why an order finding that entity in contempt for failure to comply with the court's order entered on July 3, 2008 should not be entered. Based upon the averments of the foregoing Motion, the Trustee has established that an entity designated as "Metropolitan Title Company" has failed to comply with an order of the court entered on July 3, 2008. It would thus be possible for the court, if the Trustee's allegations are true, to enter an order finding that "Metropolitan Title Company" failed to comply with an order of the court. The focus of the Trustee's original motion, upon which the court's July 3, 2008 order was entered, was to obtain documents from the target party, i.e., Metropolitan Title Company. The court has already issued an order which requires that entity to turn over the requested documents to the Trustee. Sanctions for contempt include monetary sanctions, but monetary sanctions will not address the focus of the Trustee's motion for turnover. The "gun behind the door" with respect to an entity's violation of an order for turnover is ultimately the utilization of the United States Marshal's Service to take the offending party into custody and bring the offending party before the court, so that the offending party can be incarcerated until compliance is had with the court's order. Anticipating this ultimate resolution, the court cannot direct the United States Marshal's Service to apprehend "Metropolitan Title Company" and bring "Metropolitan Title Company" before the court for incarceration until

“Metropolitan Title Company” complies with the court’s order.

A business entity other than a sole proprietorship is a separate legal entity apart from any individual, and while it may be appropriate to direct such a business entity to undertake certain actions by order of a court, when that entity fails to comply, and then ultimately fails to respond to an order to show cause, the next step – enforcement of an order for contempt – requires an individual, not a business entity, for the effectuation of the relief sought by the proponent of the original order directed against that entity. Business entities other than sole proprietors act through partners (if a partnership), or principal officers if a corporation. Given that fact, the person responsible for the activities of a business entity is its primary officer or partner, and it is this person who must answer for any non-compliance with a court order. However, if the court were to address the Trustee’s “Motion for Rule to Show Cause” with respect to the entity itself, if no one were to appear at the show cause hearing, that would be the end of any effective remedy for effectuating the focus of the Trustee’s original motion for turnover. Thus, the Motion for Rule to Show Cause should be directed to the Chief Executive Officer or principal person in charge of Metropolitan Title Company, and not to the entity itself. If that individual then disobeys the order to show cause, the mechanism has been established for dragging that individual into court personally to answer to the court for contempt of its order.

IT IS ORDERED that a hearing will be held on **November 21, 2008, at 9:00 A.M.** to address the person – including the specific identity of that person, if known to the Trustee – to whom a rule to show cause should be entered for failure of the entity designated as Metropolitan Title Company to comply with an order of the court.

Dated at Hammond, Indiana on October 9, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee