SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA	:	Case Number: 2024 CAB 4751
v.	:	Judge: Shana Frost Matini
YAZAM INC. d/b/a EMPOWER	:	Next Hearing: February 14, 2025

CONDITIONAL ORDER OF CONTEMPT

On July 29, 2024, the District of Columbia ("District") filed the above-captioned matter, asserting that Defendant Yazam Inc., d/b/a Empower ("Empower") failed to comply with a cease-and-desist order issued by the District's Department of For-Hire Vehicles ("DFHV") which was affirmed by the Office of Administrative Hearings ("OAH") on May 22, 2024. On November 26, 2024, this Court granted the District's motion for judgment on the pleadings and issued an order requiring Empower to "immediately cease operations as a digital dispatch service and private sedan business, to include a prohibition on using the Empower platform to provide any rides which originate or terminate in the District, until such time as Defendant has registered as a Private Vehicle-For-Hire Company…" *See* Order at 11 (Nov. 26, 2024) ("Order").

On December 6, 2024, the District filed a Motion for Contempt ("Mot."), contending that Empower continued to operate in the District of Columbia without registering as a Private Vehicle-For-Hire Company, in violation of the Court's Order. On December 23, 2024, Empower filed an Opposition ("Opp.") to the District's Motion, and the District filed a Reply on December 30, 2024.

On January 10, 2025, the Court conducted a show cause hearing, at which counsel for the District and Empower appeared. At the hearing, the Court denied Empower's request to stay its Order pending appeal, finding that Empower had not met the applicable factors to justify a stay. *See Barry v. Wash. Post Co.*, 529 A.2d 319, 320–21 (D.C. 1987) ("To prevail on a motion for

stay, a movant must show that he or she is likely to succeed on the merits, that irreparable injury will result if the stay is denied, that opposing parties will not be harmed by a stay, and that the public interest favors the granting of a stay."). Thus, the Court addresses the District's request to hold Empower in contempt and to sanction Empower.

At the January 10, 2025 hearing, Empower expressly acknowledged its non-compliance with the Court's Order; the Court therefore requested supplemental briefing regarding what, if any, sanctions are appropriate to coerce Empower's compliance with the Order. The parties filed simultaneous briefs on this issue on January 14, 2025 ("District Supp. Mem.;" "Empower Supp. Mem."), with simultaneous responses ("District Supp. Reply;" "Empower Supp. Reply") filed January 16, 2025.

Analysis

To issue a civil contempt order, the Court must find that the moving party has made "a clear and convincing showing that (1) the alleged contemnor is subject to a court order, and that (2) he or she failed to comply with that order." *Wagley v. Evans*, 971 A.2d 205, 210 (D.C. 2009) (citing *Lopez v. Ysla*, 733 A.2d 330, 334 n.12 (D.C. 1999)). Here, the clear and convincing requirement is plainly satisfied as to both factors as it is undisputed that Empower is subject to the Court's November 26, 2024 Order, and Empower has affirmatively acknowledged that it has not complied with that Order.

Our Court of Appeals has recognized only two defenses in civil contempt proceedings: "substantial compliance and inability to do that which the court commanded." *D.D. v. M.T.*, 550 A.2d 37, 44 (D.C. 1988) (citations omitted). The alleged contemnor's intent is "immaterial." *Id.* (citation omitted). At the January 10, 2025 hearing, Empower failed to offer any evidence or even any argument to support either defense; rather, it took issue with the legality of the Court's

Order, and contended that the Court erred by not considering the merits of Empower's challenge to the OAH order affirming the DFHV's cease-and-desist order.

As this Court found in its Order, OAH determined that "DFHV had met its burden of showing that Empower was violating the law by failing to register as a private vehicle-for-hire company and by failing to comply with various other statutory provisions." Order at 5-6 (citing Compl. ¶ 46). Although Empower appealed the OAH final order, it did not seek to stay the order at the administrative level as permitted, and thus the OAH order remained in effect. *See* D.C. Code § 2-1831.16(a) (an order from the OAH "shall be effective upon its issuance, unless stayed by an Administrative Law Judge…"). As such, the DFHV cease-and-desist order was an enforceable order, *see* 31 D.C. Mun. Reg. § 705.6 (cease-and-desist orders "shall be enforced pending a final decision on the merits."), and it was undisputed that Empower declined to comply with that order.

Essentially, Empower has contended that this Court must independently determine the merits of the DFHV cease-and-desist order and the OAH order upholding it. *See* Opp. at 2 (asserting that the Court's Order "is itself invalid" because the Court "improperly entered an injunction without considering the factors required for injunctive relief…"). However, determination of the propriety of the DFHV cease-and-desist order and the OAH order upholding it falls exclusively within the jurisdiction of the Court of Appeals. *See* D.C. Code § 2-1831.16(e). Thus, while the District is permitted to come before this Court to obtain injunctive relief for failure to comply with a cease-and-desist order, *see* 31 D.C. Mun. Reg. § 705.6, this Court cannot conduct its own review of the OAH order. Rather, the Court's Order simply recognized that Empower is required to comply with the DFHV cease-and-desist order pending a final decision on the merits of that order, and any argument by Empower that DFHV or OAH erred

was beyond this Court's purview. Empower's contention that this Court must determine the merits of the DFHV/OAH decisions—which this Court lacks jurisdiction to do—seeks to avoid the remedy afforded the District by its regulations to ask this Court to "enforce compliance" with the law. 31 D.C. Mun. Reg. § 705.7.[1] Empower has failed to demonstrate either substantial compliance with the Court's Order, or the inability to comply with the Court's Order, and thus has failed to demonstrate a recognized defense to civil contempt.

"One who is subject to a court order has the obligation to obey it honestly and fairly, and to take all necessary steps to render it effective." *D.D.*, 550 A.2d at 44. Empower has failed to fulfill its obligation to obey the Court's Order; rather, it has taken the legally unsupported position that it is permitted to ignore the DFHV cease-and-desist order until it can obtain (it hopes) the outcome it wants in the Court of Appeals. While the Court recognizes that Empower has confidence in the ultimate outcome of this matter, Empower's optimistic belief does not permit it to disregard its legal obligations under District of Columbia law or this Court's Order. Thus, the Court finds Empower in contempt of the November 26, 2024 Order.

"Unlike criminal contempt, which is designed to punish the contemnor and to vindicate the court, civil contempt serves one of two purposes, either to enforce compliance with a court

[1] To the extent Empower contends that the Court's Order did not consider the factors underlying injunctive relief, the Court clarifies that injunctive relief is warranted on the very limited issue before this Court as it is abundantly clear that the District is substantially likely to prevail on the merits of its contention that Empower is required to comply with the DFHV cease-and-desist order until a final decision on the merits. *See* 31 D.C. Mun. Reg. § 705.6; *see also* Order at 10. And injunctive relief "may be justified, for example, where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury." *City Fed. Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1998); *see also District of Columbia v. Towers*, 250 A.3d 1048, 1053 (D.C. 2021) (noting that the factors for injunctive relief "'interrelate on a sliding scale' such that a stronger showing of a likelihood of success may compensate for a weaker showing on the other factors and vice versa.") (quoting *Salvattera v. Ramirez*, 105 A.3d 1003, 1005 (D.C. 2014) (internal quotation marks omitted). Moreover, there is a very strong public interest in insuring compliance with the law when such compliance is—like here—plainly required. To permit Empower to simply ignore the DFHV cease-and-desist order because it disagrees with it is highly adverse to the public interest and sets a poor precedent. The Court's Order was therefore limited to providing the District what is permitted by law: to obtain a court order from the Superior Court to require compliance, *see* 41 D.C. Mun. Reg. 705.7, not to provide an opportunity to revisit the merits of the underlying decision.

order or to compensate for losses sustained by reason of a party's non-compliance." *In re T.S.*, 829 A.2d 937, 940 (D.C. 2003) (citing *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 12 & n.5 (D.C. 1988)).

The District has requested that, in order to coerce compliance, the Court assess a fine against Empower for $100,000 per day and personally against its CEO Joshua Sear of $10,000 per day, as well as its attorney's fees relating to the Motion. District Supp. Mem. at 1-2. For its part, Empower urges the Court to "exercise its broad discretion not to make any contempt finding," or to delay imposition of any sanction until after its appeals are resolved. Empower Supp. Mem. at 2. Empower also suggests that the Court "use its discretion to attempt to facilitate an actual solution by requiring both Empower and District officials to meet to map out a strategy and timeline for promptly achieving and accommodating Empower's registration and compliance while the legislative process moves forward." *Id.* Empower contends that additional fines are meaningless as "DFHV has already fined Empower roughly $100 million" which is far above its assets and revenue. *Id.* Empower further contends that compliance with the Court's Order will result in destruction of its business and financial devastation for its drivers. *Id.* at 2-3.

It is plain from its supplemental brief that Empower intends to keep ignoring the law and this Court's Order. While the Court appreciates Empower's proffered willingness to engage in discussions with the District to work out some sort of solution to permit Empower to not comply with the District's regulations as they currently stand, Empower Supp. Mem. at 2, the Court is not persuaded that its contempt powers should be utilized to permit a litigant an opportunity to persuade the District that it should be excused from the District's current laws. Indeed, Empower and the District have had several years to reach an agreement as to whether Empower could present the District with assurances that its business model satisfied the District's public safety

concerns; in the meantime, Empower has operated in blatant violation of the District's law, and now seeks a pass from this Court to continue to do so.

Likewise, the Court does not find it appropriate to stay any effort to coerce compliance until after the appeal process is resolved. Again, it is abundantly clear that Empower must comply with the law. To stay a coercive sanction will only have the effect of emboldening Empower to persist in in its recalcitrance towards its legal obligations to the District.

While the Court is not optimistic that a monetary sanction will be any more effective than the substantial fines already levied by DFHV and ignored by Empower, and while "sanctions for civil contempt are often drastic," *D.D.*, 550 A.2d at 44, the Court will seek to coerce Empower's compliance with a daily fine of $25,000.00 against Empower, which will cease at the moment Empower complies with the November 26, 2024. *See Salazar v. District of Columbia*, 602 F.3d 431, 438 (D.C. Cir. 2010) (agreeing that "'per diem fine[s] imposed for each day a contemnor fails to comply with an affirmative court order' are sanctions for civil contempt, whereas 'a flat, unconditional fine' with respect to which 'the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance' is a sanction for criminal contempt.") (quoting *Int'l Union, United Mineworkers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994)).

The Court further schedules a hearing to determine whether an additional—or alternative—sanction is required to gain Empower's compliance with the law. At that time, the Court will also consider whether any such sanctions should also be directed at Mr. Sear, given the representation by Empower that Mr. Sear, as Empower's CEO, "will not shut down Empower so long as he is confident that this Court's injunction and the [OAH decision] are invalid and will be overturned on appeal." Empower Supp. Reply at 3. Again, Empower has offered no legal justification for its position that it need not comply with the cease-and-desist order pending a

final determination on the merits by the Court of Appeals; to the extent that Mr. Sear affirmatively chooses to have his business disregard the law, he too may be subject to contempt. *See Wilson v. United States*, 221 U.S. 361, 377 (1911) (noting that because a "corporation can only act through its agents, the courts will operate upon the agents through the corporation," and as such where "members fail to obey [a command of the court], those guilty of disobedience may, if necessary, be punished for the contempt."). Mr. Sear may not unilaterally decide which laws his business will and will not follow.

Finally, the Court will award the District its attorney's fees in litigating Empower's contempt of this Court's Order. *See D.D.*, 550 A.2d at 44 ("The 'American rule' notwithstanding, the contemnor is ordinarily required to pay the aggrieved party's counsel fees, even in the absence of a finding of willfulness.") (citations omitted).

Accordingly, it is this 3rd day of February 2025, hereby:

ORDERED:

(1) that Defendant Yazam Inc. d/b/a Empower is in **CONDITIONAL CONTEMPT** of the Court's November 26, 2024 Order;

(2) that Defendant Yazam Inc. d/b/a Empower may purge the contempt by immediately ceasing operations as a digital dispatch service and private sedan business, to include a prohibition on using the Empower platform to provide any rides which originate or terminate in the District, until such a time as Defendant has registered as a Private Vehicle-For-Hire Company under D.C. Code § 50-301.29a(12) and 31 DCMR §§ 1605.1, 1902.1, as required by the May 22, 2024, Order issued by the Office of Administrative Hearings affirming the cease and desist order issued to Defendant by the District Department of For-Hire Vehicles;

(3) that if Defendant Yazam Inc. d/b/a Empower fails to comply with paragraph (2), *supra*, of this Order, a fine is herewith imposed on Defendant Yazam Inc. d/b/a Empower, beginning February 4, 2025, in the amount of $25,000.00 per calendar day and continuing for each calendar day until the contempt is purged, payable to the Treasury of the District of Columbia; and

(4) that the daily fine will cease to further accrue once and if Defendant Yazam Inc. d/b/a Empower complies with paragraph (2), *supra*, of this Order; and it is further

ORDERED that a further contempt hearing is scheduled for February 14, 2025 at 9:30 a.m. to determine whether Defendant Yazam Inc. d/b/a Empower has complied with the terms of this Order and the November 26, 2024 Order, or whether additional coercive methods must be ordered. The hearing will be conducted in person in Courtroom 130. The Court further orders that CEO Joshua Sear, any and all individuals that are officers, owners, and/or managers of Defendant Yazam Inc. d/b/a Empower, and any and all individuals that have the legal authority to comply with paragraph (2), *supra*, of this Order, be present in person for the February 14, 2025 hearing.

SO ORDERED.

Judge Shana Frost Matini
Superior Court of the District of Columbia

Copies electronically served upon counsel of record