UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-08986-CIV-ALTONAGA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARLINE GRANT, *et al.*,

Defendants.
_______________________________________/

ORDER

THIS CAUSE came before the Court upon Defendant, Arline Grant's ("Mrs. Grant['s]" or "Defendant['s]") Opposition to Order to Show Cause . . . and . . . Motion to Discharge the Order to Show Cause . . . ("Motion") [ECF No. 164], filed on September 14, 2012. The Court has carefully reviewed the parties' written submissions and applicable law.

I. BACKGROUND[1]

In 2000, Plaintiff, the United States, brought a civil action against Defendants, Arline and Raymond Grant, for their unpaid federal income tax liabilities. (*See* Compl. [ECF No. 1]). A clerk's entry of default was entered against the Grants on February 15, 2001 (*see* [ECF Nos. 7, 8]), and in 2003, final judgment was entered for Plaintiff and against the Grants for an amount over $36 million plus interest. (*See* [ECF No. 67]). By Order dated December 22, 2005 ("Repatriation Order" or "December 22 Order"), Mrs. Grant was ordered to appoint a trustee in the United States for two offshore trusts, or in the alternative, to otherwise repatriate the assets

[1] Unless otherwise indicated, the facts are undisputed. Relevant portions of the background are repeated from the Court's Order dated June 22, 2012 ("June 22 Order" or "Show Cause Order") [ECF No. 156], granting Plaintiff's Renewed Motion for Order to Show Cause [ECF No. 129].

held in those trusts in order to satisfy the 2003 judgment. (*See* [ECF No. 117]). In October 2007, Plaintiff filed a Motion for Issuance of Order to Show Cause [ECF No. 120], as Mrs. Grant had failed to comply with the Repatriation Order. In an Order dated May 27, 2008 ("Denial Order") [ECF No. 123], the Court denied Plaintiff's 2007 Motion for Show Cause Order as it found that Mrs. Grant had sufficiently demonstrated she was then unable to comply with the Repatriation Order. According to the Court, Mrs. Grant had "made significant efforts to repatriate the funds to the United States, either directly to her or to a U.S. trustee, to no avail." (*Id.* 2).

On January 13, 2012, Plaintiff filed a second Show Cause Motion [ECF No. 129], after learning that Mrs. Grant had received over $221,000 in principal from the two offshore trusts since the time of the Denial Order. Mrs. Grant did not dispute that she received the funds and provided none of the funds to Plaintiff. The Court granted Plaintiff's Motion and required Mrs. Grant to "show cause why she should not be held in contempt of court for her failure to comply with the Court's Order dated December 22, 2012 [ECF No. 117] upon receiving over $221,000 in principal from the subject Trusts." (Show Cause Order 8). The instant Motion followed.

II. LEGAL STANDARD

A finding of civil contempt is warranted "only upon a showing that the alleged contempt is clear and convincing." *Ga. Power Co. v. Nat'l Labor Relations Bd.*, 484 F.3d 1288, 1291 (11th Cir. 2007) (citing *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000) (alterations removed); *Nat'l Labor Relations Bd. v. Crockett-Bradley, Inc.*, 598 F.2d 971, 975 (5th Cir. 1979)). "[C]lear and convincing evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order." *Id.* (citing *McGregor*, 206 F.3d at 1383) (alterations removed).

III. ANALYSIS

Mrs. Grant's sole argument in response to the Show Cause Order rests on the second element necessary for finding her in contempt; namely, that the Repatriation Order was "ambiguous subject to reasonable misinterpretation." (Mot. 2 (citation omitted)). The text of the Repatriation Order, in its entirety, reads as follows:

> The report and recommendation of Magistrate Theodore Klein [D.E. 114], is ratified and adopted. Accordingly, the government's motion to for [sic] repatriation of assets [D.E. 108] is GRANTED, and Arline Grant is hereby ordered to appoint a trustee in the United States for the Bermuda and Jersey trusts, or in the alternative, to otherwise repatriate the assets held in the Bermuda and Jersey trusts.
>
> All pending motions in this matter are DENIED AS MOOT and this case is CLOSED.*
>
> * I will retain jurisdiction to enforce this order.

(Repatriation Order 1). Mrs. Grant argues that the Repatriation Order did not direct her to turn over anything to the Plaintiff, but rather "clearly envisioned that once the assets were returned to this Country, it was incumbent upon Plaintiff to use the proper procedures to levy upon the same." (Mot. 2). In effect, Mrs. Grant asserts that she complied with the Repatriation Order — as she interprets it — when she transferred funds from the trusts to her children's bank accounts in the United States; that the Plaintiff does not have those funds in its possession is due to its own failure to initiate additional procedures to acquire them.[2] For the following reasons, the argument wholly fails to persuade.

As a preliminary matter, the Court recalls that it had declined to issue a Show Cause Order in 2008 because Mrs. Grant represented then she was unable to repatriate the funds despite

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[2] (*See* Mot. *passim* (referring to Federal Rule of Civil Procedure 69, the Federal Debt Collection Act, 28 U.S.C. section 3202, 28 U.S.C. section 3014, and New York Civil Practice Law and Rule section 5205)).

significant efforts. (*See* Denial Order 3). That Mrs. Grant has since been able to repatriate funds to her children's bank accounts in the United States, but failed to expressly and timely inform Plaintiff's counsel or the Court of that fact, brazenly flouts the authority of the Court.

Next, as the Court previously noted (*see* Show Cause Order 2 n.1), the cause for the Repatriation Order was a Magistrate Judge's Report recommending that the Court grant the United States' motion to require Mrs. Grant to repatriate offshore trust funds "to pay down a portion of the tax liability owed by the Grants." (Report dated Sept. 2, 2005, at 2 [ECF No. 114]). The Repatriation Order "ratified and adopted" the Report. (*See* Repatriation Order 1). Thus, the Court could not have been any clearer: repatriated funds were to "pay down" the Grants' tax liability to the Plaintiff. The use of repatriated funds for other purposes, including for Mrs. Grant's "general sustenance" (Reply 2), runs plainly afoul of the Court's Order.

Lastly, even if Mrs. Grant correctly contends that Plaintiff must undertake additional procedural requirements to collect on its judgment in the face of Mrs. Grant's reluctance to pay it, that does not vitiate Mrs. Grant's acts of obtaining $221,000 in trust principal, having the monies distributed to her children, and continuing to direct how the money is used — none of it to satisfy the outstanding judgment.

For the foregoing reasons, Mrs. Grant has clearly violated the Repatriation Order.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1) The Motion **[ECF No. 164]** is **DENIED**.

2) Arline Grant is held in civil contempt of the Court's Order dated June 22, 2012 [ECF No. 156].

3) The Court will address the United States' Motion for Permanent Injunction . . . [ECF No. 130] in a separate Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of March, 2013.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record