

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-814 (RCL)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

PLAINTIFFS' MOTION FOR AN ORDER FOR DEFENDANT TO
SHOW CAUSE WHY IT SHOULD NOT BE HELD IN CONTEMPT OF COURT
AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

COME NOW plaintiffs Roger Hall and Studies Solutions Results, Inc., by counsel James H. Lesar, and plaintiff Accuracy in Media, Inc., by counsel John H. Clarke, and respectfully move this Court for entry of an Order for Defendant Central Intelligence Agency ("CIA") to Show Cause why it should not be held in Contempt of Court for its failure to remit attorney fees, as ordered by this Court, over three months ago.

Memorandum of Points and Authorities

1. By Order entered on July 15, 2015, the Court granted plaintiffs' motion for an interim award of attorneys' fees, in the aggregate amount of \$414,478. Docket No. 237.

2. The Department of Justice ("DOJ") did not submit a motion to reconsider within 28 days from the July 15, 2015 judgment, nor did it appeal within 60 days.

3. In response to Mr. Lesar's September 15 inquiry, the AUSA representing the CIA, Damon Taaffe, asked whether payment should be made by check or Electronic Funds Transfer ("EFT"). If by EFT, Mr. Lesar was told to provide his bank's routing and account numbers, and, if by treasury check, he was told to indicate to whom the check should be made. Mr. Lesar indicated that he could be available beginning September 16 to pick up the checks, and inquired how much time it would take to transfer the funds either by treasury check or digitally.

4. AUSA Taaffe told Mr. Lesar that he would not be able to pick up the check at the USAO because he would be in trial the next week. Mr. Taaffe also said that when he consulted with his colleagues at USAO, they thought it would be inappropriate for the USAO to be involved in handling payment by check. Thus, Mr. Taaffe rejected Mr. Lesar's offer to pick up the treasury check at the USAO. In light of this, plaintiffs' counsel agreed to a digital transfer of the funds. On September 18, 2015, Mr. Lesar provided his bank routing and check numbers to Mr. Taaffe. Mr. Clarke did likewise.

5. On September 15, and again on September 22, Mr. Clarke asked for a date by which the funds would be deposited. The response was that the CIA would deposit the funds "ASAP."

6. During this period, counsel for the CIA advised plaintiffs' counsel that payments would be made to them by September 30, 2015—the end of the fiscal year.

7. On September 28, Mr. Taaffe sent an email addressed to both Mr. Clarke and Mr. Lesar requesting that they provide their federal tax ID numbers. Both counsel responded immediately. However, Mr. Lesar's reply giving his federal tax number was transmitted to Mr. Clarke and not to Mr. Taaffe, so, on October 1, 2015, Mr. Lesar provided that information to Mr. Taaffe.

8. On October 5—the third business day after the agreed upon date of September 30 for the EFT—counsel learned by inquiring at their banks that the CIA had failed to deposit the funds. So, they contacted defense counsel. AUSA Taaffe replied to both Mr. Lesar and Mr. Clarke, "I'm inquiring."

9. On October 6, Mr. Taaffe wrote to plaintiffs' counsel that "the payment information is in the hands of the department that will be executing the payment," and that the CIA had "authorized me to say that payment will be made by October 16, i.e., next Friday"—within ten days.

10. On October 15, AUSA Keith Morgan, who was handling the matter in Mr. Taaffe's absence, agreed to confirm with the CIA that it had made the deposits. On Friday, October 16, Mr. Morgan informed Mr. Clarke that the CIA had not, and would not, deposit the payments that day, even though the CIA had, 10 days earlier, committed to do so, again. Mr. Morgan related that the CIA had stated that it now planned to deposit the funds in another week, by October 23, 2015. Mr. Clarke requested that the funds be transferred that day. The CIA declined.

11. By email sent on Sunday, September 18, plaintiffs demanded that the deposits be made by the close of business on Monday, October 19, or plaintiffs would seek redress with the instant motion, a draft of which plaintiffs attached. The CIA declined.

12. Instead, a CIA official responded:

Sounds like everything is in the system, so now it is just a matter of when the Treasury actually makes the payment. Unfortunately, it doesn't sound like that will likely happen today. We can't say with certainty when Treasury will move the funds, but I'm told that we are more realistically hoping for mid-week at this point.

Conclusion

13. On September 15, plaintiffs asked for the date by which the funds would be deposited. The CIA's answer was "ASAP," but, in any event, by September 30. On October 5, when plaintiffs learned that the CIA had

disregarded its commitment, they were then told that the matter was "in the hands of the CIA department that will be executing the payment," and that the funds would be deposited within ten days. They were not.

14. Plaintiffs demanded that the deposit be made on Friday, October 16, to no avail. Then, plaintiffs demanded that the deposit be made on Monday, October 19. Again the CIA declined. Even after having been provided a draft of the instant pleading, defendant took no remedial action. Rather, it responded that it "can't say with certainty when... [the CIA] will move the funds," although it was "hoping for mid-week."

15. Defendant's representations are unreliable. The undersigned have been damaged by the CIA's failures to fulfil its commitments.

WHEREFORE, plaintiffs pray that this Court issue an Order for the CIA to Show Cause, if it can, why it should not be held in Contempt of Court for its violations of this Court's July 15, 2015, Order to remit to Mr. Lesar \$294,296, and to remit to Mr. Clarke \$120,182.

DATE: October 20, 2015.

