

COMMONWEALTH OF PENNSYLVANIA BY
ATTORNEY GENERAL THOMAS W.
CORBETT, JR.,

Plaintiff

v.

CLAUDIA MONTELIBONE, NOTARY
ACCEPTOR

Defendant

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 2008 CV 00875

DAUPHIN COUNTY
PENNSYLVANIA

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MEMORANDUM

Upon review of the appeal initiated on behalf of the above named Defendant, Claudia Montelione, aka Claudia Ann Montelione, (Appellant), to this Court's Orders dated March 4, 2008 and March 28, 2008, and pursuant to the requirements of Pa.R.C.P. §1925(a), and further in response to the request of the Commonwealth Court to provide this writing, the following Memorandum is hereby issued.

PRELIMINARY STATEMENT:

Upon review of the Orders of March 4, 2008 and March 28, 2008 from which the Appellant prosecutes her appeal, we initially note that both Orders, are, in our considered judgment, Interlocutory Orders within the meaning of the

statutes, Rules of Procedure and well-established case law, and are therefore not appealable, *per se*.

no competence/prejudice

Pursuant to Pa.R.A.P. No. 301, only Orders in which a final disposition of a case has been rendered are appealable, unless otherwise provided by statute. See, Jenkins v. Hospital of Medical College of Pennsylvania, 634 A.2d 1099 (Pa. 1993). In the instant matter, the Orders which the Appellant seeks to appeal are in the nature of statutory enforcement of a subpoena issued by the Attorney General of this Commonwealth and the ultimate issuance of a Bench Warrant for the Appellant's failure to appear at a previously scheduled and duly noticed Hearing. However, should it be determined that possible appealable issues exist in this matter, the following analysis is offered to illuminate this Court's actions and the basis thereof.

no prejudice, no ill-effects

On January 18, 2008, the Office of the Attorney General, Bureau of Consumer Protection (Attorney General), filed a Motion for Sanctions seeking to enforce its administrative subpoena issued on November 26, 2007, which subpoena had been served upon the Appellant. This administrative subpoena sought the production of information regarding the Appellant's business practices as a "Notary Acceptor" and related assorted commercial enterprises. In response to the Attorney General's Motion for Sanctions, the Appellant filed a document entitled "Conditional Acceptance for Value for Proof of Claim" on January 18, 2008, and returned the Attorney General's Motion for Sanctions to this Court.

*Further to
Comp by AG 1106 & 1107
LFE -*

On February 5, 2008, an Order was issued by this Court scheduling a Sanctions Hearing for March 4, 2008, requiring both parties to appear before this Court, requiring an Affidavit of Compliance for proper personal service, admonishing both parties of the possible penalties if either party failed to appear, and restricting the Prothonotary's office from accepting any document that would terminate or discontinue the matter pending further Order of Court. On February 11, 2008, an agent of the Attorney General personally served a copy of said Scheduling Order, dated February 6, 2008, upon the Appellant.

On February 28, 2008, the Appellant filed seven documents with the Prothonotary's office, entitled as follows:

- (1) "Verified Motion to Demand this Court Read All Pleadings Defendant in Error Files with this Court, and Adhere Only to Constitutionally Compliant Law and Case Law, and More Particularly, the Bill of Rights, in Its Rulings";
- (2) "Verified Motion for Citizen's Demand for Trial by Jury";
- (3) "Motion for Assistance of Unfettered Counsel.";
- (4) "Verified Motion in Abatement to Dismiss with Prejudice";
- (5) "Verified Motion to Claim and Exercise Constitutional Rights and Require the Presiding Judge to Rule Upon this Motion, and All Public Officers of this Court to Uphold Said Rights";
- (6) "Affidavit of Non Corporate Status"; and
- (7) "Affidavit of Notice of Default."

In response to Appellant's various and rather novel "Verified Motions," this Court issued Non-Entertaining Orders, dated March 3, 2008, for each of the Defendant's "Verified Motions", specifically noting that the Appellant failed to comply with Dauphin County Local Rules 208.2(d) and 205.2(a)(3) in preparing and submitting Motions to this Court.

After a Hearing held on March 4, 2008, this Court issued an Order, of even date, wherein the Appellant was afforded an additional period of ten (10) calendar days to provide verified answers to all of the information requested by the Attorney General's administrative subpoena issued on November 26, 2007. The Appellant was admonished that failure to comply with this Court's Order may result in contempt charges and further sanctions. This admonishment was announced in open Court proceedings and the same was included in this Court's written Order, which was filed, docketed, and personally served by a representative of the Attorney General upon the Appellant on March 11, 2008. Thereafter, the Appellant filed a "Second Motion in Abatement to Dismiss with Prejudice" on March 4, 2008. In response to Appellant's Motion, this Court issued a Non-Entertaining Order, dated March 5, 2008, again citing Appellant's failure to follow the Dauphin County Local Rules relating to Motions.

On March 10, 2008, the Appellant filed two documents entitled "Defendant's Responses/Objections to Plaintiff's Motion for Sanctions submitted Nunc Pro Tunc" and "Motion to Quash Plaintiff's Subpoena and/or in the Alternative Motion for a Protective Order Against Self-Incrimination." In response, this

Court again issued Non-Entertaining Orders, dated March 11, 2008, citing Appellant's failure to properly follow the Dauphin County Local Rules.

On March 18, 2008, the Attorney General filed a Motion for Contempt for Appellant's failure to properly respond to the Attorney General's administrative subpoena within the ten (10) calendar days required by this Court's Order of March 4, 2008, and which Motion was personally served upon the Appellant on March 19, 2008. The Commonwealth's Motion for Contempt requested that this Court incarcerate the Appellant until she responds to the Attorney General's subpoena issued November 26, 2007.

On March 18, 2008, the Appellant filed another "Defendant's Responses/Objections to Plaintiff's Motions for Sanctions Submitted *Nunc Pro Tunc*" and another "Motion to Quash Plaintiff's Subpoena and/or in the Alternative Motion for a Protective Order Against Self-Incrimination." In response to Appellant's Motions and the Attorney General's Motion for Contempt, this Court issued an Order, dated March 19, 2008, scheduling a Hearing for March 28, 2008 to review both parties' motions, and a copy of said Order was personally served by the Attorney General's agent upon the Appellant on March 19, 2008.

On March 21, 2008, the Appellant filed another array of "Verified Motions," declaring the same *Nunc Pro Tunc*. The Appellant also filed a Praecipe requesting this Court to schedule a Hearing on March 28, 2008 to review the following "Motions" entitled:

- (1) "Verified Motion for Judicial Notice, Nunc Pro Tunc";
- (2) "Verified Motion of Non Corporate Status, Nunc Pro Tunc," together with "Points and Authorities in Support of Affidavit for Non Corporate Status";
- (3) "First Motion in Abatement to Dismiss with Prejudice, Nunc Pro Tunc"; and
- (4) "Verified Motion to Dismiss Plaintiff's Motion for Contempt."

After careful review and consideration of the aforementioned Motions, this Court issued an Order, dated March 25, 2008, and it was served upon Appellant on March 25, 2008, wherein we denied the Appellant's "Verified Motion for Assistance of Unfettered Counsel, Nunc Pro Tunc," pursuant to the Appellant's request that such Motion be addressed and decided by this Court prior to the March 28, 2008 Hearing. On March 25, 2008, this Court issued a collateral Order, which was also served upon Appellant on March 25, 2008, indicating that the Appellant's remaining "Verified Motions," filed on March 21, 2008, would likewise be addressed at the March 28, 2008 Hearing, per the Appellant's written request to this Court.

On March 26, 2008, a representative of the Appellant hand delivered a document entitled "Bonded Promissory Note CAM-AG-32608-BPN" in the face amount of "One Hundred Million Dollars," dated March 25, 2008, upon this Court; the Dauphin County Prothonotary, Stephen E. Farina; Attorney General Thomas W. Corbett, Jr.; and the Deputy Attorney General Michael C. Gerdes. The following day, the Appellant filed the following additional documents under the purported authority of the "Supreme Court

held at Lackawanna County, nation Pennsylvania a superior court for the People" (sic) with the Dauphin County Prothonotary:

- (1) "Writ of Prohibition";
- (2) "Order to Terminate Action";
- (3) "Order of Dismissal Due to Settlement";
- (4) "Verified Notice of Rescission of Order Setting Hearing Date";
- (5) "Bonded Promissory Note CAM-AG-120307."

It is interesting to note that the Appellant's "Writ of Prohibition" purported to ORDER this Court and the Attorney General to "cease and desist in all actions decrees, orders, judgments and proceedings" with regard to the Appellant. The Appellant's said "Orders" also purported to dismiss "all claims against the Defendant" and the Appellant's "Verified Notice of Rescission" likewise purported to dismiss this Court's Order of March 19, 2008, scheduling the March 28, 2008 Hearing. The Appellant personally signed these "Orders" as "Judge, sovereign-in-fact supreme court, original jurisdiction in the Presence of the Great Spirit Lackawanna County, the nation of Pennsylvania" (sic). On the same day, the Appellant filed a "Courtesy Warning Letter" stating that failure to comply with the Appellant's "Order to Terminate Action" and "Order of Dismissal Due to Settlement" would activate the bonded promissory note for "One Hundred Million Dollars," deposited on February 14, 2008.

After the Appellant failed to appear for the noticed March 28, 2008 Hearing pursuant to this Court's Order of March 19, 2008, this Court issued a Bench Warrant for the Appellant's arrest. The following day, the Appellant was taken into custody by the Pennsylvania State Police in Lackawanna County. On March

31, 2008, this Court granted the Attorney General's Motion to declare as legally invalid the Appellant's documents entitled "Due Presentment Under Notary Seal," filed on March 26, 2008, and "Order of Dismissal Due to Settlement", filed on March 27, 2008, due to the fact that both documents failed to conform with both Pennsylvania law and the Pennsylvania Rules of Civil Procedure. This Court found those documents to be a legal nullity. In addition, this Court found that the Appellant's other "Verified Motions" filed on March 21, 2008 had been abandoned by the Appellant and the issues within said Motions were deemed waived, with prejudice, due to the Appellant's failure to appear at said Hearing and pursue the aforesaid Motions. (N.T. March 28, 2008, p. 7).

After the Bench Warrant Hearing on March 31, 2008, this Court issued an Order finding the Appellant in both Civil and Criminal Contempt. This Court found the Appellant in Civil Contempt for the Appellant's willful failure to comply with both the Attorney General's administrative subpoena and this Court's Order of March 4, 2008, instructing Appellant to comply with the Attorney General's subpoena. As of the March 31, 2008 Hearing, the Appellant had not complied with the Attorney General's administrative subpoena. This Court issued a Civil Contempt Order on the same day, declaring that the Appellant remain in Dauphin County Prison until compliance with this Court's Order of March 4, 2008 has been effectuated, thereby purging herself of Civil Contempt. This Court also fined the Appellant \$2,500, plus the costs of proceedings, including the Sheriff's bill of costs and a bill of costs submitted by the Attorney General's Office. In addition, this Court held the Appellant in Indirect

Criminal Contempt for the Appellant's defiant failure to appear for the March 28, 2008 Hearing pursuant to the March 19, 2008 Scheduling Order. This Court issued a finding of Indirect Criminal Contempt, imposing a \$500 fine and sentenced the Appellant to a minimum imprisonment of three months and a maximum sentence of six months in Dauphin County Prison for the Appellant's willful and intentional failure to appear at the March 28, 2008 Hearing.

On April 13, 2008, a woman purporting to be the Appellant's daughter, Francesca Shannon Montelione, with alleged Power of Attorney, filed a "Caveat" and a "Power of Attorney Contract" on behalf of her mother, the Appellant. On April 28, 2008, Francesca Shannon Montelione filed a "Notice of Appeal Nunc Pro Tunc" along with a "Request for Transcript" and "Certification/Affidavit of Service" with the Prothonotary's office, initiating the instant and specific appeal of this Court's Order of March 4, 2008 (giving the Appellant 10 days to provide the requested information to the Attorney General), and this Court's Order of March 28, 2008 (wherein we issued a Bench Warrant for the arrest of the Appellant). On May 23, 2008, the Appellant filed a "Praecipe to Append Notice of Appeal with Claudia Ann Montelione's Signature and At the Same Time Withdraw the Notice of Appeal that was Signed By Francesca Montelione" and filed a "Notice of Appeal." It is specifically noted that in all other respects, the Appellant's said Praecipe restated the issues identified in the original appeal filed on behalf of the Appellant.

DISCUSSION:

After review of the record, it is the considered opinion of this Court that first, the Appellant is challenging the Attorney General's power to subpoena the Appellant's business records without a "regular" civil action having been filed against her. Second, the Appellant is appealing this Court's authority to issue the Order for the Bench Warrant, dated March 28, 2008, for the arrest of the Appellant due to her failure to appear for the March 28, 2008 Hearing. We will address each of the Appellant's issues on appeal seriatim.

First, the Appellant appeals this Court's March 4, 2008 Order giving the Appellant ten (10) additional calendar days to provide complete, verified answers to all the requested information pursuant to the Attorney General's administrative subpoena, issued on November 26, 2007. Pursuant to the grant of sweeping authority and power given by the General Assembly, the Attorney General of this Commonwealth, by and through the Director, Bureau of Consumer Protection (BCP), is specifically empowered as follows:

(a) The Attorney General shall be authorized to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents, and files relating to any commercial and trade practices which the Bureau of Consumer Protection has authority to investigate and conduct private or public hearings; and, for this purpose, the Attorney General or his representative may sign subpoenas, administer oaths or affirmations, examine witnesses and receive evidence during any

such investigation or public or private hearing.

71 P.S. §307-3(a) (1968).

Unfortunately for the Appellant, she has chosen to represent herself throughout these proceedings, and she has attempted to contrive and portray the law as being something which it is not, and has also further deeply ensnared herself in additional serious legal proceedings of both a civil and criminal nature. Of some collateral interest in these rather bizarre proceedings is the fact that the Appellant's initial appearance before this Court on March 4, 2008 was in the company of none other than Mr. Eugene Wrona, a defrocked and disbarred former lawyer in this Commonwealth. We invite the Appellate Court to review the lengthy written Opinion and Order of the Disciplinary Board concerning Mr. Wrona, and his scurrilous activities perpetrated against the Honorable Alan M. Black, of the Lehigh County Court of Common Pleas, and other Judicial Officers and related Court personnel. Office of Disciplinary Counsel v. Eugene Andrew Wrona, 123 DB 2004 (Pa. 2006).

The Appellant correctly asserts that she was not served with an original civil Complaint, nor was she served with a Notice to Defend associated with any such filing. The Appellant further asserts, albeit fatally incorrect, that the instant proceedings initiated by the Attorney General require those types of predicate proceedings, pursuant to Pa.R.C.P. No. 1007 and 1901.1. Again, unfortunately for the Appellant, it appears to be her patently erroneous belief that the Attorney General must first initiate a formal civil action before a subpoena for

business records may be issued by his Bureau of Consumer Protection (BCP).

. . . [T]he application of Pa.R.C.P. No. 1007 to subpoena enforcement procedures [are] identical to those employed here, the [Pennsylvania Supreme] Court stated: 'Rule 1007 provides that 'an action' may be commenced by the filing of a praecipe for a writ of summons, a complaint, or an agreement for amicable action. 'Action' is defined in Rules 1001 to mean action in assumpsit, and by extension in later rules also includes actions in trespass, equity, ejectment, and the various other forms of action covered by the rules. None of the rules embraces the kind of proceeding here involved. Rule 1007 is therefore not applicable.'

Commonwealth of Pennsylvania, Acting by Attorney General Robert P. Kane v. Tri-State Hearing Aid Company, 390 A.2d 321, 322 (Pa. Commw. 1978), citing Pennsylvania Crime Commission Petitions, 285 A.2d 494, 498 (Pa. 1971).

In Commonwealth v. Tri-State Hearing Aid Company (Tri-State), the Bureau of Consumer Protection, acting under the authority of the Attorney General, subpoenaed the appellant to appear at the BCP's office at a specified time and to bring records relating to the hearing tests of two specific individuals who had filed complaints about the appellant's services. In the instant case, Appellant provided services to the general public through her business, Penny Pincher Press. Analogous to Tri-State, the BCP has jurisdiction over the Appellant's business and the BCP does not need to take "action"

against her, other than issuing a subpoena as part of their investigation. Thus, Pa.R.C.P. No. 1007 is inapplicable.

As previously stated, the Pennsylvania Legislature clearly made an exception to the Commonwealth's Rules of Civil Procedure when it enacted 71 P.S. §307-3(a) granting the Attorney General the power to initiate consumer protection investigations with an administrative subpoena. This Court informed the Appellant at the March 4, 2008 Hearing that if she wanted to contest the propriety of the Attorney General's administrative subpoena, then she should have filed either a motion to quash or a motion for a protective order with regard to her objections to the scope of the administrative subpoena during the time the subpoena was active and prior to its return date. (N.T. March 4, 2008, p. 9). Since the Appellant made no attempt to file a motion to quash or a protective order, the Appellant was deemed to have forfeited her right to contest the subpoena and her only recourse was to provide the subpoenaed information to the Attorney General. (N.T. March 4, 2008, p. 7).

Under 71 P.S. §307-3(a), if the subpoenaed individual or business fails to provide the requested information, the Attorney General, Bureau of Consumer Protection:

. . . may invoke the aid of the Commonwealth Court or any court of record of the Commonwealth, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents and files relative to the matter in question. Any failure to obey such order of the court may

be punished by such court as a contempt thereof.

71 P.S. §307-3(a) (1968). During the March 4, 2008 Hearing, this Court informed the Appellant that she must comply with the administrative subpoena and specifically issued an Order giving the Appellant an additional ten (10) calendar days to provide the requested information to the Attorney General or possibly be found in contempt for failure to provide the subpoenaed records. (N.T. March 4, 2008, p.11). The distilled essence of this issue is whether the Attorney General has the authority to issue administrative subpoenas and whether the Courts of the Commonwealth have the authority to enforce said subpoenas. Based upon the statute and case law, there is no viable question about that authority.

Appellant's second issue on appeal is this Court's Order, dated March 28, 2008, issuing a Bench Warrant for the Appellant due to her failure to appear for the March 28, 2008 Hearing. Under Pennsylvania Rules of Civil Procedure, No. 1910.13-1, it states in pertinent part:

- (a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds:
 - (2) Upon the affidavit of a hearing officer or conference officer that
 - (iv) a competent adult handed a copy of the court order to the party, and filed an affidavit of service.

Pa.R.C.P. No. 1910.13-1(2008). The Appellant willfully failed to appear for the March 28, 2008 Hearing, pursuant to this Court's Order of March 19, 2008. A representative of the Attorney General's office personally served the Order of March 19, 2008 upon the Defendant on that same day. The Attorney General filed a Return of Service accompanied with an Affidavit of Service with the Prothonotary's office on March 25, 2008. During the March 28, 2008 Hearing, this Court found, on the record, that the Appellant had received actual personal, in-hand service of the March 19, 2008 Order. (N.T. March 28, 2008, p. 4).

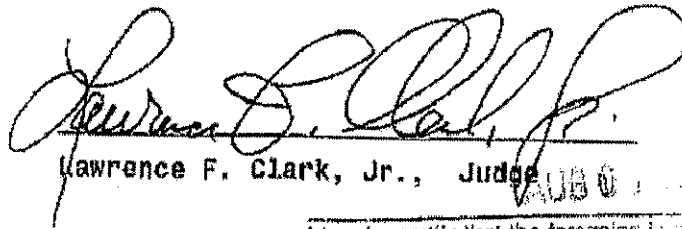
Furthermore, on March 21, 2008, the Appellant filed a "Praecipe," stating, "kindly schedule the above-captioned Motions for the hearing date of Friday, March 28, 2008, before the President Judge and/or assigned Judge" and she included a proposed scheduling order. The "Motions" referred to the "Verified Motions" that were also filed on March 21, 2008. The Appellant later confirmed her actual knowledge that this Court required her presence for the March 28th Hearing by filing the "Writ of Prohibition" and the "Verified Rescission" with the Prothonotary's office wherein she specifically purported to "dismiss" this Court's March 19th Order that scheduled the March 28th Hearing date and also purported to "dismiss" all judgments against her. Due to the fact that the Appellant's attendance was mandatory, and Appellant willfully failed to appear, this Court rightfully issued a Bench Warrant pursuant to Pennsylvania Rules of Civil Procedure No. 1910.13-1.

CONCLUSION:

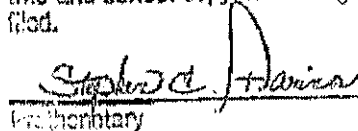
Thus, the Appellant has become the architect of her own unfortunate situation. Additionally, the Appellant's obvious seething contempt for the proper legal processes of this Commonwealth is manifest throughout her numerous bizarre filings and actions. Therefore, we respectfully suggest that her appeals be dismissed as meritless, indeed frivolous.

ISSUED AT HARRISBURG, this 31st day of July, 2008.

BY THE COURT:


Lawrence F. Clark, Jr., Judge

I hereby certify that the foregoing is a true and correct copy of the original filed.


Stephen C. Davis
Clerk

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