

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DUANE F. BOWMAN,

Defendant.

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ORDER

97-C-0757-C

Plaintiff United States of America has moved for entry of an order in the ongoing garnishment action against defendant Duane F. Bowman. Plaintiff seeks possession of the 17,100 shares of U.S. Bancorp common stock belonging to defendant and presently in the custody of Park Bank. The motion will be granted.

Pursuant to a writ of continuing garnishment, Park Bank filed an answer dated November 2, 2001, stating that it was holding the stock and that it was collateral for a loan. Defendant had a number of opportunities to request a hearing regarding any claim that he had that the property belonging to him and in the Park Bank's custody was exempt from garnishment. After many fits and starts, on January 3, 2002, defendant advised the court and plaintiff that he was withdrawing his request for a hearing. Approximately six days

earlier, he had filed a petition seeking relief under Chapter 13 of the Bankruptcy Code.

On July 2, 2002, plaintiff learned that Park Bank was no longer holding the stock as collateral for a loan; it asked the bankruptcy court to lift the automatic stay so that it could proceed in this court to collect the stock from Park Bank under its continuing writ of garnishment. The motion was granted on July 26, 2002. With the stay lifted, I will enter an order directing garnishee-defendant Park Bank to deliver the 17,100 shares of U.S. Bancorp common stock to plaintiff immediately.

Defendant has filed a motion for delay in the entry of the order on two grounds: 1) if the court enforces the terms and conditions of the writ served upon U.S. Bancorp that U.S. Bancorp has violated, the penalties accruing to defendant would be greater than defendant's debt to plaintiff; and 2) the government's failure to allow for any set aside for state and federal capital gains will add to the severe tax penalty already incurred by defendant. Accompanying the motion for delay is a revised version of the motion defendant filed earlier, seeking an order to show cause why various garnishee defendants should not be held in contempt of court for violating the terms of the writ of continuing garnishment. In the motion, defendant alleges that U.S. Bancorp did not send him a copy of its original answer to the writ, that the company sent him a dividend check contrary to the terms of the writ and in response to defendant's inquiry about the dividend check, sent defendant a receipt with a telephone number suggesting that someone in the company had talked with

someone in the Department of Justice.

This new information was not part of defendant's original motion for an order to show cause but it does not change the outcome of the motion. U.S. Bancorp's ministerial missteps do not warrant either an order to show cause why it should not be held in contempt of court or an award of costs to defendant (and certainly not an award of costs sufficient to offset his tax debt to plaintiff).

As to defendant's request for delay in the entry of the order directing turnover, it is far too late to ask for more delay. The record is replete with instances of the delays defendant has caused, including the filing of his bankruptcy action. It is long past time for the government to collect the assets due it. There is no reason for defendant to think that he is entitled to any damages as a result of any alleged defects in U.S. Bancorp's response to the writ of garnishment or that he is entitled to any offset against his assets for capital gains taxes that may be due. (If there is any basis for such an offset, defendant has not suggested what it might be. As the movant, it is his responsibility to identify the legal basis for the order he is seeking.)

#### ORDER

IT IS ORDERED that defendant Duane F. Bowman's motion for delay in the entry of the order to Park Bank is DENIED, as is his revised motion to show cause why certain

garnishee defendants should not be held in contempt of court. FURTHER, IT IS ORDERED that the motion of plaintiff United States of America for entry of an order in the garnishment action is GRANTED. Garnishee defendant Park Bank shall deliver the 17,100 shares of U.S. Bancorp belonging to defendant Duane F. Bowman immediately in accordance with the writ of garnishment and shall confer with counsel for plaintiff United States about the details of delivery.

Entered this 6th day of August, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge