UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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IN RE: CASE NO.: 09-34791-RBR

ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11

Debtor.
_____/

BRADLEY EDWARDS'S REPLY TO JEFFREY EPSTEIN'S RESPONSE IN OPPOSITION FOR ISSUANCE OF AN ORDER TO SHOW CAUSE WHY FOWLER WHITE AND JEFFREY EPSTEIN SHOULD NOT BE HELD IN CONTEMPT OF COURT, TO PERMIT DISCOVERY, TO ASSESS SANCTIONS AND COSTS, AND FOR OTHER APPROPRIATE RELIEF

Bradley J. Edwards, through counsel, hereby files this Reply to Jeffrey Epstein's Response in Opposition to Farmer Jaffe's Motion to Show Cause Why Fowler White and Jeffrey Epstein Should Not Be Held in Contempt of Court, to Permit Discovery, to Assess Sanctions and Costs, and for Other Appropriate Relief, and as grounds therefore states as follows:

INTRODUCTION

Jeffrey Epstein's Motion, through one misstatement after another, amounts to nothing more than his continued baseless disparagement of Mr. Edwards, and a poor attempt to deflect from his wrongdoing and avoid the pertinent issues. [DE 6351]. In 2010, a subpoena was issued to the RRA trustee that resulted in the production of 27,000 emails exchanged among lawyers who worked at the defunct RRA law firm. This Court recognized that within those documents was highly confidential and privileged emails pertaining to Jeffrey Epstein's sexual abuse victims and the prosecution of their civil cases against Mr. Epstein. In order to protect the sanctity of those privileges, the Court ordered a special master to preside over the confidential review of such documents. Through its order, this Court also recognized the obvious concerns associated with

allowing Epstein's lawyers to photocopy and Bates stamp the emails. There can be no doubt that Mr. Epstein explicitly violated this Court's clearly worded November 30, 2010 Order [DE 1194], a fact which will be proven when Mr. Epstein takes the stand to testify about the matters asserted herein at an evidentiary hearing before this Court. Consequently, the only real issue before this Court is a determination of the nature and extent of the violation and an appropriate sanction. In fact, Epstein's continued use of and reference to emails he knows he should not possess, yet repeatedly alludes to in his memorandum before this Court [DE 6351], is further evidence of his utter disregard for the bankruptcy Court's authority. The issue here is really very simple. The Court ordered Fowler White and Epstein not to do something or they would be sanctioned. They did it anyway. The issue for the Court is to fashion appropriate sanctions.

RELEVANT FACTS

Bradley Edwards represented child sexual abuse victims of registered sex offender Jeffrey Epstein, in part while he was employed for RRA in 2009. In that representation, Mr. Edwards and his colleagues who worked on those matters did as all co-counsel do, and exchanged emails related to those clients, which included private information about them that is clearly covered by attorney-client privilege. Those same attorneys exchanged factual information gathered through various investigative sources protected by work-product privilege. The attorneys also exchanged mental impressions, strategy, theories, and opinions about the cases, also content protected by the work-product privilege. Lastly, because Jeffrey Epstein molested so many children there were numerous other law firms representing the child victims who shared a common interest and exchanged ideas through email among one another; those emails are protected by the common interest privilege and work-product privileges, and at times, attorney-client privilege.

As explained in detail in Farmer Jaffe's underlying motion [DE 6326] and joined by Mr. Edwards [DE 6325], Epstein sued one of his own child victims, L.M., Edwards, and Rothstein alleging that each had committed a series of criminal acts against him and caused him damages. The lawsuit read as a whole was intended to convey that the underlying lawsuits alleging Jeffrey Epstein abused Edwards's clients, including L.M., were fabricated, and that discovery was conducted to further criminal activity. Epstein's primary purpose of his lawsuit was to intimidate Edwards and L.M. and extort Edwards into abandoning the sexual molestation lawsuits Edwards was pursuing against Epstein on behalf of his clients. As further detailed in the initial pleading before this Court, Epstein served a subpoena on the RRA trustee that ultimately resulted in 27,000 RRA emails being placed on a disc for Edwards and his attorneys to review, decide which emails were subject to privilege, create a privilege log, and determine which emails could be produced to the defense.

The Court ruled the printing and Bates Stamping would be done at Epstein's expense. Farmer Jaffe tried to insist on an outside vendor providing the service, but Special Master Carney and members of the Fowler White law firm convinced the Court that it was more cost-effective for Epstein to perform the task in-house at Fowler White. Despite strong objection lodged with Special Master Carney from Farmer Jaffe about the practical problems of allowing an adversary to copy and Bates Number potentially privileged documents, this Court, at the request of Special Master Carney ordered that Fowler White perform this task in-house.

Recognizing the sanctity of the privileges at stake, and the extraordinary harm that could result from an adversary impermissibly viewing and worse using that information to gain an unfair litigation advantage, the Court fashioned an Order to ensure that any violation would be met with serious consequences. Both Fowler White and Epstein knew the importance of strict compliance

with the Order and knew failure to comply would result in sanctions. The task could not have been simpler—Bates Number, Print, return all copies to Farmer Jaffe and Judge Carney, and do not maintain any copy.

Instead, Fowler White kept a copy of the disc after Bates Numbering the documents in direct violation of the Court Order. The documents could only benefit their client Epstein, so the logical deduction is that the disc was kept for exactly that purpose, and likely at his direction. In support of that logic, the plan has worked out seemingly perfectly for Epstein. He's inexplicably changed lawyers numerous times to create what he now claims as plausible deniability, and is using the misappropriated emails to his unfair advantage in litigation and to draw distorted and baseless conclusions from pieces of the emails in order to further his smear campaign against Edwards. At this point Epstein and his lawyers know they possessed these emails through improper means, yet even in the latest papers to this Court use the information they gleaned from this knowingly illegal review to mischaracterize the emails to accomplish no purpose other than disparage Edwards.

LEGAL STANDARD

Courts necessarily have the inherent equitable power "to prevent abuses, oppression and injustices." *Fayemi v. Hambrecht and Quist, Inc.*, 174 F.R.D. 319 (1997) (citing *Gumbel v. Pitkin,* 124 U.S. 131, 144 (1888); *see also International Products Corp. v. Koons,* 325 F.2d 403, 407–08 (2d Cir.1963); *Smith v. Armour Pharmaceutical Co.,* 838 F.Supp. 1573, 1578 (S.D.Fla.1993); *Schlaifer Nance & Co. v. Estate of Warhol,* 742 F.Supp. 165, 166 (S.D.N.Y.1990)). Likewise, the Court has the "inherent authority to sanction a party who attempts to use in litigation material improperly obtained outside the discovery process." *Id.* at 324 (citing *Adams v. Shell Oil Co. (In re Shell Oil Refinery),* 143 F.R.D. 105, 109 (E.D.La.1992); *see also Lipin v. Bender*, 84 N.Y. 2d

562 (1994) (highlighting the significant litigation advantage of one party and consequent inherent disadvantage to the other when confidential documents are misappropriated by an adversary). Pursuant to this inherent authority, "a court must be able to sanction a party that seeks to introduce improperly obtained evidence; otherwise the court, by allowing the wrongdoer to utilize the information in litigation before it, becomes complicit in the misconduct." *Id.* This Court specifically retained jurisdiction in the November 30, 2010 Order for the purpose of awarding sanctions if Fowler White or Epstein ever "retained images or copies of the subject documents…." [DE 1194].

The conclusions Epstein and his new lawyers reach, and the inferences they draw from the emails are intentional and gross distortions, but that is not the point. They admit that they possess or possessed emails from the disc that they never should have possessed, yet they brazenly continue to use the information, including in pleadings to this Court, to serve Epstein' purpose. Lawyers not specifically named in the Order because they were simply unknown to the Court at the time cannot be insulated from sanction when they file pleadings overtly violating the spirit of the Order. Their continued use of the information gathered from the documents is derived only as a consequence of the retention of the documents, and their continued use is telling that neither Epstein nor his current attorneys intend to respect the Order absent serious sanctions. There is no excuse for Epstein's continued violative behavior and the sanctions this Court retained jurisdiction to levy must be extended to everyone who has possessed and misused the emails on behalf of Epstein, which now at least includes Link and Rockenbach.

Epstein is at the epicenter of everything and cannot escape sanctions as his response would unbelievably request. The subpoena was issued on his behalf, the disc was copied for only his advantage, the Order expressly informed him that he would be sanctioned if he ever retained a

copy, and every person who has improperly viewed the emails has been on his payroll and serving him. Epstein had an obligation the second he saw the first privileged email to inform his attorneys against use and to return the disc. Epstein has not so much as filed an affidavit as to what he saw, what he paid for in relation to the improper creation and maintaining of this disc, what he has done with the information, or what he intends to do with the improperly received knowledge going forward. His testimony is crucial on these topics in order for this Court to appreciate the breadth of the violation and craft a fair remedy—to the extent that is possible at this point.

Contrary to Epstein's apparent assertions, what happened, which emails were produced, which were placed on a privilege log and not produced, and which were ordered at a later time to be produced is not speculation at all. It is provable beyond all reasonable doubt. While Epstein attempts to muddy the water with an overly convoluted tall tale full of half-truths and blatant distortions meant to obscure the issues, the facts are clear. The disc contains thousands of emails that have **never** been turned over to Epstein, and over which privilege has been asserted. Epstein and his legal team improperly obtained these privileged communications in violation of this Court's Order, insist on continuing to use them, and will continue to do so until stopped. Incredibly, even knowing they are in violation of the Order does not even slow them down, as they continue to file their alleged conclusory findings in pleadings.

Epstein's argument that after having reviewed the emails in question he feels the emails are not protected by privilege due to a waiver or issue injection carries no weight whatsoever. Certainly not with this Court and on the present issue of whether retention, dissemination and use of the emails on the disc occurred. Regardless, Epstein and his counsel well know that this is not an allowable method to contest the adequacy of a privilege log. Epstein has always been represented by counsel. Epstein contested the adequacy of Mr. Edwards's privilege log years ago.

At one point, the State Court—the only Court with jurisdiction over the adequacy of the log—agreed that the log was insufficient and then before requiring a revised log reversed that decision. Whether the privilege log was adequate, and whether the privileges were waived at some point in time is all totally irrelevant to this proceeding and were issues for a different court to determine if properly challenged years ago. The privilege log was never successfully challenged; and there is no doubt the emails should never have legally been in the hands of Jeffrey Epstein or his legal team without a successful challenge the privilege log. They don't get to look at stolen materials and make challenges to the invocation of privilege. There is a protocol in Florida for challenging the sufficiency of a privilege log. If an in-camera inspection was required, the time to do that was years ago. If Epstein believes some other lawyer should have done that on his behalf, then maybe he has a malpractice claim he wants to bring. But misappropriating emails in violation of a Court Order, recognizing them as being listed on a privilege log, reviewing them anyway, then contending that the substance found in the emails should not under the circumstances be protected by privilege is not how it works. Aggravating the harm by publicly disseminating the substance of the emails or the slanted conclusions drawn therefrom is also not acceptable and warrants greater sanction.

Through misstatements, distortions of known facts, and an attempt to over complicate things, Epstein poorly seeks to shift the issue to whether privilege was properly invoked in the creation of the privilege log over seven years ago. That is certainly not an issue before the Bankruptcy Court. At this stage, the parties were about to start trial when Epstein mysteriously started listing as trial exhibits emails that are listed on the February 23, 2011 privilege log, and that were stolen in violation of this Courts Order. Sanctions are necessary. Sanctions against everyone who has played a role in allowing Epstein to gain an inherent, irreversible, unfair

litigation advantage, and who continue—despite knowledge of the violation—to improperly use the substance of the emails in pleadings, is essential for the protection of the justice system and the litigants who operate within it. Discovery is necessary to fully understand the scope of the violation and to appreciate the damage caused in order to fashion an appropriate sanction.

CONCLUSION

WHEREFORE, Bradley Edwards respectfully requests that this Court enter an order to Fowler White and Epstein to show cause why they should not be held in contempt of court, allowing discovery and an evidentiary hearing on the circumstances surrounding the improper copying, retention, distribution and use of privileged materials, and allowing Bradley Edwards to seek such other sanctions as remedies as may be appropriate following discovery on these matters including but not limited to attorney's fees and imposition of a retroactive daily fine that measures the harm caused as well as to coerce and ensure compliance with this Court's order.

I HEREBY CERTIFY that, pursuant to L.R. 9073-1(D), Movant's counsel has contacted Epstein's counsel (Fowler White) in a good faith attempt to resolve the matter without a hearing before bringing this motion. Undersigned counsel contacted Fowler White for their position prior to filing the underlying Motion. Fowler White has failed to provide that position.

I HEREBY CERTIFY that, pursuant to L.R. 9011-4(B) the undersigned counsel is qualified to practice before this Court.

I HEREY CERTIFY that a true and correct copy of the foregoing was served on electronically to the examinee, the debtor, the attorney for the debtor, the trustee, all CM/ECF

subscribers, and by email or U.S. Mail on those parties listed on the attached service list this 12th day of April, 2018.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 12, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certified that the foregoing document is being served this day on all counsel of record or pro se parties identified on the on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by

CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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