

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

FILED

2003 SEP -8 P 2:43

CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

In Re:  
Daniel S. Somerson,

Case No. 3:02-cv-1158-J-20TEM  
3:02-cv-121-J-20TEM

JUDGMENT IN A CIVIL CASE

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that pursuant to the Court's Order entered this date, judgment is entered in favor of the United States of America and against Daniel S. Somerson. Daniel S. Somerson is in civil contempt of the Consent Order entered by this Court on April 8, 2002, and he shall pay a fine of \$5,000.00 into the registry of this Court within 30 days. Daniel S. Somerson is permanently enjoined from filing or attempting to initiate any new claim or lawsuit in any federal court in the Middle District of Florida without first obtaining leave of the federal court.

Date: September 8, 2003

SHERYL L. LOESCH, CLERK

*Sandra P. Wallen*

By: Sandra P. Wallen, Deputy Clerk

Copy to:

Counsel of Record  
Unrepresented Parties

SCANNED

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FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

2003 SEP -8 P 12:04

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE

IN RE:

DANIEL S. SOMERSON

Case No. 3:02-cv-1158-J-20TEM  
3:02-cv-121-J-20TEMORDER

This matter is before the Court on an Order Certifying Facts Relating to Somerson's Intimidation and Harassment of Witnesses and Counsel to the United States District Court (hereinafter, Referral) that was issued by the Honorable Edward Terhune Miller, Administrative Judge, U.S. Department of Labor (hereinafter, ALJ) on December 20, 2002.<sup>1</sup> The Referral certifies certain facts to this Court "for such action as may be deemed appropriate in respect of the specified violation of the Consent Order" which this Court had entered on April 8, 2002 in response to Somerson's prior actions. In re: Daniel Somerson, Case No. 3:02-cv-121 (hereinafter, Consent Order).

Somerson's Memorandum with Regard to Show Cause Hearing and the Addendum (Doc. Nos. 10 and 11) were both filed on May 23, 2003. The United States' Proposed Findings of Fact and Proposed Conclusions of Law (Doc. No. 12) was filed on May 27, 2003. The United States' Unopposed Motion to File Proposed Findings of Fact and Conclusions of Law One Court Day Out of Time (Doc. No. 12, filed on May 27, 2003), is **GRANTED**, and its Proposed Findings of Fact will

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<sup>1</sup>In addition to the Referral, the ALJ also entered an Order Dismissing Somerson's whistleblower Complaint due to the finding that he threatened and harassed witnesses and opposing counsel which impeded the administration of justice.

be deemed as timely filed.

More specifically, this Court's Consent Order (Doc. No. 12 in Case No. 3:02-cv-121-J-20TEM), which both parties signed and which was entered on April 8, 2002 as a result of Somerson's disruptive conduct in the initial ALJ proceedings, provided:

That Daniel Somerson shall conduct himself *within the bounds of appropriate respect and decorum*, albeit with allowance for appropriate zeal and vigor, *during any proceedings, and any matters related thereto*, held under the authority of the Office of Administrative Law Judges, U.S. Department of Labor, and regarding any other official purpose with any person or organization of the Office of Administrative Law Judges, U.S. Department of Labor, wherein Daniel S. Somerson is a party, a representative, a witness or other participant.

The ALJ identifies Somerson's violation of the Consent Order by his threatening communications to and harassment of two witnesses and abusive communications directed at opposing counsel. The Referral contains an "Attachment A" and describes Somerson's violation of the Consent Order as involving "e-mail communications of implicitly threatening nature, and e-mail and website characterizations directed at Respondent's counsel that are provocative, vulgar, and egregiously abusive."

As a result of the Referral, this Court held a Show Cause hearing on January 14, 2003, directing Somerson to show cause why he should not be held in contempt. At the hearing, the Court was advised that the United States alleged additional violations of the Consent Order that had not been set forth in the Referral. Consequently, the Court instructed the United States to file a Bill of Particulars regarding Somerson's violations, and set an evidentiary hearing for April 25, 2003.

This Court has jurisdiction to consider whether Somerson violated its own Consent Order, because the Court expressly retained jurisdiction to enforce any violation by Somerson and to impose

sanctions as well as to consider a Referral from an Administrative Law Judge. 18 U.S.C. 401(3); see also 49 U.S.C. 31105(d).

The Bill of Particulars added an allegation that Somerson violated the Consent Order "by his conduct and activities related to the telephonic hearing held on August 29, 2002, before the Honorable Edward Terhune Miller, Administrative Law Judge . . . ." At the evidentiary hearing, the United States described Somerson's conduct that was in violation of the Consent Order as his recordation of the telephonic hearing. Somerson admitted to recording the August 29th telephonic hearing, and explained that it was to refute any future accusations that his tone and attitude were contumacious if such became an issue, as it had in the past. Somerson also explained that he had posted excerpts of the recorded hearing on his website, truckingsolutions.com, because he believed it to be relevant to his truck safety website. The evidence shows that Somerson recorded the August 29th hearing without providing notice and without seeking or obtaining authorization or consent from the authorities or participants and attendees of the recorded hearing. Nevertheless, the recording was of a telephonic public hearing, and the taping was not necessarily unlawful under Florida Statute §934.03(1)(a) and § 934.03(2)(h) since there arguably was no expectation of privacy, and what was communicated is "readily accessible to the general public" because it was recorded by a court reporter. See also State v. Smith, 641 So.2d 849 (Fla. 1994); Chandler v. State, 366 So.2d 64 (Fla. 3d DCA 1978), cert. denied, 376 So.2d 1157 (Fla. 1979), *aff'd*, 449 U.S. 560, 101 S.Ct. 802 (1981) (holding that defendants who engaged in an open-air conversation while using commercially sold walkie-talkies did not demonstrate a reasonably justifiable expectation that their conversation would remain private and so was not proscribed by chapter 934); see also, 18 U.S.C. § 2511.

Moreover, the Administrative Judge did not include this conduct concerning recording the

hearing in his thorough 11 page, single spaced, Referral. Also, this Court notes that where the Administrative Judge later issued an order prohibiting the tape recording of a subsequent telephonic hearing, Somerson abided by the order and did not record it. Accordingly, this Court finds that Somerson did not clearly violate the Consent Order which required him to "conduct himself within the bounds of appropriate respect and decorum" when he recorded the August 27, 2003 telephonic hearing, where no prior order had prohibited the recording.

On the other hand, this Court finds that Somerson violated the Consent Order by sending the e-mails and posting the websites described in the Referral and included in its Attachment "A," which the Court finds are true copies of Somerson's actions. Somerson argues here for the first time that the e-mails are not genuine, and have been cut and pasted, altered with white-out, electronically parsed or otherwise corrupted by others, but failed to submit any corroborating evidence to support his position. In addition, Somerson argues that the e-mails and website postings occurred after the evidence portion of the proceedings, but this Court finds that the administrative proceedings had not concluded and were still, in fact, ongoing and pending. Therefore, this Court finds that Daniel Somerson failed to "conduct himself *within the bounds of appropriate respect and decorum . . . during any proceedings, and any matters related thereto.*" Accordingly, Somerson's e-mails and websites found in Attachment "A" of the Referral consist of conduct within the ambit of the Consent Order and amounted to a violation thereof.

Finally, Somerson argues that the contents of his website are protected by the First Amendment right to free speech and had no impact on the litigation. He also contends that the e-mails were not sent with the intent to impede the administration of justice nor for the purposes of threatening or intimidating anyone with regard to the administrative law case. However, the Court

finds that even if it were to agree with him on those points, the content of the websites and e-mails still violate this Court's Consent Order in that Somerson was not conducting "himself within the bounds of appropriate respect and decorum" in any matters "related to" the administrative proceedings. There is no respect or decorum in the following quoted portions of materials originated and published by Somerson:

1. an e-mail dated November 5, 2002, which was addressed to a prospective witness, Eli Gray, titled "ELI GRAY WEARING STRIPES," whereby Somerson suggested that "all that remains are the criminal charges and resulting indictments" for "conspiracy, racketeering, to name a few" and demanded to "Turn yourself in before we have to hunt you down like a dog."

2. an e-mail dated October 8, 2002 directed to Larry Cole, who had previously testified, and was identified for recall, stating "I should have asked him 'do I need to tell them to bring an ambulance or a Hearst'" and in another e-mail sent on the same date, titled "Every breath you take, every move you make, I'll be watching you," the content reads "You asked for it \*shithead\*, now you gotta belly full of trouble" and "You ain't seen nothin yet." The e-mail also calls Mr. Cole "truly evil" who is "guilty of extreme perjury in a Federal Truck Safety Case (2002-STA-44 Somerson v. Mail Contractors of America)."

3. repeated e-mails were sent to Somerson's opposing counsel, Oscar Davis, with derogatory remarks like "Choke on this Cracker-Head" and "I'll bet you run out of bacon around your blubber-ball waist before you run out of server space - you peckerhead!" and "You don't have the balls." The e-mails include links to websites, including one with a picture of opposing counsel with large headings such as "Oscar Davis Sucks! . . . This Rude Loudmouthed Hay-Seed Racist Baffoon from Arkansas Actually 'Practices' Law?"

The Court finds that such vulgar name calling and accusations that a witness committed crimes and perjury during the administrative proceeding, which Somerson directly refers to by case number, is, without any question whatsoever, well outside the "bounds of respect and decorum" in any matter "related to the administrative proceedings" and, therefore, in direct violation of this Court's Consent Order. This Court further finds that Somerson's e-mails and websites are of a harassing nature, and are hostile and crude to say the least. His messages do not instill dignity and

respect for the administrative proceedings, nor for the witnesses or counsel involved. Accordingly, this Court finds that Somerson has violated the Consent Order with respect to the e-mails and websites attached to the Referral.

Furthermore, "[f]ederal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions . . . . Considerable discretion necessarily is reposed in the district court. [A plaintiff] can be severely restricted as to what he may file and how he must behave in his applications for judicial relief." Procup v. Strickland, 792 F.2d 1069, 1073-74 (11th Cir. 1986). In referring to Procup, the Eleventh Circuit Court of Appeals approved of a permanent injunction that precluded a litigant "from filing or attempting to initiate any new lawsuit in any federal court in the United States . . . without first obtaining leave of the federal court." Martin-Trigona v. Shaw, 986 F.2d 1384, 1387 (11th Cir. 1993). To require a litigant to obtain leave of court before filing any further complaints does not violate the First Amendment. Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1298 (11th Cir. 2002).

Therefore, it is

**ORDERED AND ADJUDGED that:**

- 1) Daniel Somerson is in civil contempt of the Consent Order entered by this Court on April 8, 2002;
- 2) Daniel Somerson shall make all necessary arrangements to pay a fine of \$5,000 into the Registry of the Clerk of this Court within thirty (30) days of this Order;
- 3) That Mr. Somerson's failure to pay the fine in full as ordered herein shall, without further notice, subject him to immediate arrest and incarceration until such time as he otherwise makes payment in full of the fine as ordered herein;

4) Daniel Somerson is permanently enjoined from filing or attempting to initiate any new claim or lawsuit in any federal court in the Middle District of Florida without first obtaining leave of the federal court;

5) Any future abusive, inappropriate or harassing conduct exhibited by Daniel Somerson in violation of the Consent Order previously entered by this Court on April 8, 2002 will result in the imposition of progressively greater sanctions, including the dismissal of any future actions filed by Daniel Somerson regardless of the fact that the Court may have previously granted him leave to file such claim; and

6) That the Clerk is directed to enter judgment in accordance with the forgoing against Mr. Somerson and in favor of the United States, and to close the file.

**DONE AND ENTERED** at Jacksonville, Florida this 8<sup>th</sup> day of September, 2003.



HARVEY E. SCHLESINGER  
United States District Judge

Copies to:

Mitchell A. Stone, Esq.  
Daniel S. Somerson  
Ralph J. Lee, Assistant United States Attorney  
United States Marshal  
Honorable Edward Terhune Miller, Adm. Law Judge  
Garry Randolph, Courtroom Deputy  
Law Clerk

✓ Intake  
✓ Finance