

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. EP 08-050

Bankruptcy Case No. 04-20328 JBH

**FRANK J. KRISTAN,
Debtor.**

**FRANK J. KRISTAN,
Appellant,**

v.

**JOHN C. TURNER, Chapter 7 Trustee,
Appellee.**

**Appeals from the United States Bankruptcy Court
for the District of Maine
(Hon. James B. Haines, Jr., U.S. Bankruptcy Judge)**

**Before
Feeney, Boroff and Rosenthal,
United States Bankruptcy Appellate Panel Judges.**

Frank J. Kristan, *pro se*, on brief for Appellant.

Jonathan R. Doolittle, Esq., on brief for Appellee.

February 23, 2009

Per Curiam.¹

The *pro se* debtor, Frank J. Kristan (the “Debtor”), appeals from the bankruptcy court’s June 20, 2008, order granting the motion of John C. Turner, chapter 7 trustee (the “Trustee”), for an order to show cause why the Debtor should not be held in contempt for failure to comply with a bankruptcy court order (the “Contempt Motion”). For the reasons set forth below, we

AFFIRM.

Background

In an order dated February 12, 2008, the bankruptcy court ordered the Debtor to pay sanctions of \$3,825.40 to the Trustee (“Sanctions Order”). The Debtor appealed the Sanctions Order to the Panel. Although he did not seek a stay of the Sanctions Order pending appeal, the Debtor failed to pay the sanctions amount to the Trustee as directed by the Sanctions Order. Consequently, the Trustee’s counsel filed the Contempt Motion requesting the bankruptcy court to either: (1) order the Debtor to post adequate assurance that the sanctions would be paid; or (2) enter an order finding the Debtor in contempt, compelling payment of the sanctions amount, and directing that the Debtor file no further pleadings until the sanctions were paid.

The bankruptcy court issued an order providing, in relevant part, as follows:

[I]t is hereby **ORDERED, ADJUDGED AND DECREED** [t]hat the Motion be, and hereby is, **GRANTED** in all respects. The Debtor is ordered immediately to submit \$3,825.40 to counsel to the Trustee on or before 4:00 p.m. on June 21, 2008. Counsel to the Trustee will hold the funds in escrow in a client trust account pending resolution of the Debtor’s appeal of this Court’s previous order dated February 12, 2008 (the “Sanctions Order”). If the Debtor fails to comply

¹ The Panel unanimously determined, after examination of the briefs and other materials submitted in this matter, that oral argument was not needed in this case because the facts and legal arguments were adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. See Fed. R. Bankr. P. 8012 and 1st Cir. BAP L. R. 8012-1(d). The Panel’s decision to dispense with oral argument may be announced by the Panel at the time the decision on the merits is rendered. 1st Cir. BAP L. R. 8012-1(d).

with the terms of this order, the Court reserves all of its rights to enter further orders as it deems appropriate to address the Debtor's failure to comply with the Sanctions Order.

The Debtor appealed, and the bankruptcy court denied the Debtor's motion for stay pending appeal. On October 30, 2008, the Panel entered a judgment affirming the underlying Sanctions Order.²

Jurisdiction & Standard of Review

The Panel may hear appeals from "final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)]." Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). "A decision is final if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Id. at 646 (citations omitted). The order granting the Trustee's Contempt Motion is a final order. See id.

The Panel generally reviews findings of fact for clear error and conclusions of law *de novo*. See TI Fed. Credit Union v. DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.), 43 F.3d 714, 719 n.8 (1st Cir. 1994). A bankruptcy court's decision on whether to grant relief under § 105(a) is reviewed for an abuse of discretion. See Indian Motorcycle Assoc. v. Mass. Hous. Fin. Agency, 66 F.3d 1246, 1249 (1st Cir. 1995); see also Mass. Dept. of Revenue v. Crocker (In re Crocker), 362 B.R. 49 (B.A.P. 1st Cir. 2007).

² The Debtor has appealed that decision to the United States Court of Appeals for the First Circuit.

Discussion

It is well settled that bankruptcy courts are vested with contempt powers. See Eck v. Dodge Chem. Co. (In re Power Recovery Systems, Inc.), 950 F.2d 798, 802 (1st Cir. 1991).

Pursuant to § 105(a), the bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” 11 U.S.C.

§ 105(a). This section provides bankruptcy courts with broad authority to ensure compliance with its own orders. See Bessette v. Avco Fin. Servs., Inc., 230 F.3d 439, 444 (1st Cir. 2000).

The Debtor fails to present any meritorious legal or factual reason why the Panel should conclude that the bankruptcy court erred in ordering him to comply with the Sanctions Order. Rather, he simply rehashes the same arguments raised in his appeal of the underlying Sanctions Order. We rejected those arguments in our opinion and judgment dated October 30, 2008, and affirmed the underlying Sanctions Order. There is no need to reiterate those facts and reasoning here. In the absence of a stay pending appeal, the Debtor was obligated to pay the sanctions amount to the Trustee. After a careful review of the record, we cannot conclude that the bankruptcy court made a mistake or committed clear error when it granted the Trustee’s Contempt Motion and directed the Debtor to pay the sanctions amount to the Trustee.

Conclusion

For the reasons set forth above, we summarily **AFFIRM** the judgment of the bankruptcy court granting the Trustee’s Contempt Motion.