

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

In Re:

ProCom America, LLC,  
d/b/a Beyond Band of Brothers,  
d/b/a BBOB,

Case No.: 8:20-bk-03522-MGW  
Chapter 7 Case

Debtor.

---

**TRUSTEE’S EXPEDITED MOTION TO COMPEL  
EXAMINATION TESTIMONY FROM AND FOR SANCTIONS AGAINST  
PROCOM AMERICA, LLC, PETER GAAL, AND PROCOM TOURS, LLC**  
(Hearing requested concurrent with the noticed hearing on July 28, 2022, at 10:00 a.m.)

Douglas N. Menchise, as Chapter 7 Trustee (“Trustee”), hereby moves to compel examination testimony and document production from, and for sanctions against, Mr. Peter Gaal (“Gaal”), ProCom America, LLC (the “Debtor”), and ProCom Tours, LLC (“ProCom Tours”) (the “Motion”), and states as follows:

**INTRODUCTION**

1. On May 1, 2020 (the “Petition Date”), a petition for an involuntary bankruptcy case was filed under Section 303 of Title 11 of the United States Code. [ECF No. 1]. A summons was issued thereafter. [ECF No. 5].

2. Upon consent of the parties-in-interest, the Court entered an Order for Relief on May 8, 2020. [ECF Nos. 7–9].

3. Douglas N. Menchise was appointed as the Chapter 7 Trustee in this matter. *See, e.g.*, [ECF No. 10]. The Trustee subsequently employed, with approval of this Court, the undersigned counsel as his special counsel. [ECF Nos. 93, 97].

4. Since April 29, 2021, the Trustee has sought turnover of documents and testimony from Gaal and corporate representatives of the Debtor and its affiliates, including ProCom Tours,

pursuant to Rule 2004. *See, e.g.*, [ECF No. 260]. For more than a year, the Trustee has sought this discovery and Gaal, the Debtor, and ProCom Tours have failed to comply whatsoever despite this Court granting motions to compel and has fought the Trustee at every turn.

5. Specifically, on June 1, 2021, the Trustee filed his Motion to Compel Rule 2004 Examinations Duces Tecum, which was granted on June 10, 2021. [ECF Nos. 263, 265]; *see also* [ECF No. 272] (requesting reconsideration of this Court's Order by Gaal); [ECF No. 354] (holding that the Trustee's service to Gaal's attorney was sufficient and compelling Gaal to appear for a Rule 2004 examination within 45 days); [ECF No. 357] (denying Gaal's motion for reconsideration). On June 21, 2021, the Trustee re-noticed his Omnibus Notice of Taking Rule 2004 Examinations Duces Tecum to occur on July 20, 2021, and July 21, 2021. [ECF No. 269]. On August 5, 2021, the Trustee noticed Rule 2004 examinations of two third parties who provided services to the Debtor and issued subpoenas. [ECF No. 290]. Naturally, Gaal sought to quash those subpoenas and prevent testimony and production of documents related to the Debtor. [ECF No. 295]. The Trustee later sought to compel the production of documents and a tax return. [ECF No. 312]. This Court rejected Gaal's latest attempt to stymie the Trustee's discovery requests. [ECF No. 338].

6. After this Court rendered its opinion on the propriety of the Trustee's service of Gaal and his entities via counsel, Gaal filed an appeal. [ECF No. 354, 361–63].

7. On April 5, 2022, the Trustee noticed—for the third time—the examinations of Gaal and corporate representatives of the Debtor and ProCom Tours to occur on May 3, 2022, and May 4, 2022. [ECF No. 364]. The Trustee attempted to coordinate dates for the Rule 2004 examination with Gaal's counsel but did not receive a timely response.

8. On April 5, 2022, and April 6, 2022, Gaal sought a protective order to stay his

obligation to appear at the Rule 2004 Examination while his appeal was pending in District Court. [ECF Nos. 365, 368]. Thereafter, Gaal's counsel sent the Trustee a letter summarizing the arguments in the April 2022 motions, which invoked the pending proceeding rule as both a sword and a shield.

9. On April 20, 2022, this Court denied Gaal's motions and ordered Gaal to appear at the 2004 examination as noticed. [ECF No. 385]. This Court rendered a related order on April 27, 2022, in the adversary proceeding filed against Gaal stating that the Trustee could notice a Rule 2004 examination, which would not be limited by the pending proceeding rule. [Case No. 8:22-ap-00041-MGW, ECF No. 10].

10. On April 29, 2022, the District Court dismissed Gaal's appeal. [ECF No. 389].

11. On July 7, 2022, the Trustee filed an amended omnibus notice of the examination of Gaal and corporate representatives of ProCom Tours and the Debtor, which was subsequently amended for technical issues. [ECF Nos. 399, 402–03]. The examination was to occur on July 11, 2022, and July 22, 2022, via Zoom videoconference from the Trustee's Hungarian local counsel's office in Budapest, Hungary, since Gaal is a Hungarian citizen. *Id.*

12. After engaging local counsel in Budapest, engaging two interpreters, coordinating in person facilities for the taking of the examination and coordinating with a United States court reporter familiar with Hungarian accents, on July 11, 2022, the Trustee appeared for the duly noticed examination but neither Gaal nor the corporate representatives for the Debtor or ProCom Tours appeared.

13. The latest actions of Gaal and the corporate representatives for the Debtor and ProCom Tours (the "ProCom Examinees") is the culmination of their concerted effort to refuse to

comply with discovery and production of documents, which is a flagrant disregard with this Court's clear, but thus far patient, direction and orders.

14. This conduct necessitates sanctions. *See, e.g., In re Steffen*, 406 B.R. 139 (Bankr. M.D. Fla. 2009). This Court should *again* compel Gaal and the corporate representatives for the Debtor and ProCom Tours to appear for the duly noticed examinations at the offices of the Trustee's local counsel in Budapest, Hungary, at a date, on short notice, selected by the Trustee, to produce all documents responsive to the Trustee's turnover, Rule 2004 notices, and production requests (and the Court's orders regarding the same), award the Trustee his attorney's fees and costs incurred in the failure of the ProCom Examinees to attend the examination, including bringing this Motion, and such further and other sanctions as the Court deems appropriate.

15. If ProCom Examinees fails to comply with all outstanding requests within seven (7) days, the Trustee requests this Court find the ProCom Examinees in civil contempt and provide for the imposition of daily monetary sanctions until they comply.

16. In the alternative, the Trustee requests this Court strike all pleadings filed in this case by the ProCom Examinees and all pending adversary proceedings in which any of the ProCom Examinees are a party and render a default judgment against such parties in all appropriate proceedings.

17. Additionally, while the Trustee holds counsel for Procom Examinees in the highest professional regard, such counsel have a role in the discovery failures. What that role they have played is presently unknown to the Trustee. What was communicated between ProCom Examinees and their respective counsel will reveal what is really occurring.

18. The Trustee additionally requests counsel for ProCom Examinees turnover to this Court, in camera, copies of all written communications with their clients regarding the outstanding

discovery and the need to comply, as well as their clients' responses to fully assess where fault with the contumacious conduct truly lies and to fashion appropriate sanctions.

#### **OUTSTANDING DISCOVERY**

19. As set forth in the Trustee's Motion to Compel, [ECF No. 263], and now herein, the ProCom Examinees have failed, for more than one year to produce documents in accordance with this Court's (i) Order Granting Motion to Compel, [ECF No. 265], and Protocol for the Production of Documents and the Examination, [ECF Nos. 260, 269, 364, 386, 399], and a myriad of informal discovery conferences with this Court where this Court's suggestions and direction were most definitely unambiguous. Under circumstances revealing the theft of over \$8.5 Million of Debtor's assets by Gaal and his entities in the year leading up to the Petition Date, the ProCom Examinees continue to refuse repeated requests and to defy this Court's rulings and direction.

20. The ProCom Examinees have never responded—either with a written response or production of documents—to the Omnibus Notice of Rule 2004 Examination Request for Production of Documents, [ECF No. 260], including as amended, which requested the ProCom Examinees produce the communications between the Debtor and various third parties and Debtor affiliates regarding the sale, transfer, or assignment of any of the Debtor's property.

#### **BASIS FOR RELIEF**

21. Since April 2021, the ProCom Examinees have taken intentional and specific actions to avoid nearly every obligation to produce documents and appear for Rule 2004 examinations in this case and related proceedings.

22. Instead of complying with their discovery obligations, the ProCom Examinees have engaged in a pitched battle against the Trustee to conceal crucial information from both the Trustee and this Court. The ProCom Examinees' refusal to produce documents to and testimony for the

Trustee, or otherwise cooperate in discovery, evinces a thorough, deep-seated, and prolific pattern of obfuscation, hindrance, and outright interference with the Trustee's ability to gather documents belonging to the Estate and to conduct discovery in the context of the instant case and related proceedings, thereby frustrating the overall administration of this case.

23. In addressing more than a year's worth of discovery violations, this Court has patiently ascended through a progression of interim orders to attempt to coerce the ProCom Examinees to comply with its obligations under the Bankruptcy Code, which is appropriate. [ECF Nos. 265, 338, 354, 357, 385]; *see, e.g., In re Steffen*, 406 B.R. at 144.

24. Each of those orders have not resulted in any change in the ProCom Examinees' behavior. The ProCom Examinees, assisted by their respective counsel, have only further delayed and trivialized the Trustee's efforts and this Court's orders. It is time, once again, for this Court to consider the ProCom Examinees' conduct.

25. The ProCom Examinees' conduct necessitates an escalation in sanctions against both the ProCom Examinees and, as appropriate, their respective counsel. *In re Bryson*, 131 F. 3d 601 (7th Cir. 1997).

26. This Court should again compel the ProCom Examinees fully comply with the Trustee's most recently noticed Rule 2004 Examinations, [ECF No. 403], without any further delay.

27. If the ProCom Examinees fail to comply with all outstanding requests within seven (7) days, the Trustee requests this Court provide for daily monetary sanctions against the ProCom Examinees' and their counsel until the ProCom Examinees comply.

28. In the alternative, the Trustee requests this Court strike all ProCom Examinees' filed and future pleadings in this case and all pending proceedings in which the Debtor and the

Procom Entities are parties and render a default judgment against the Debtor and the Procom Entities.<sup>1</sup>

29. Rule 37 is illustrative for how the Court may consider the ProCom Examinees' conduct. Pursuant to Rule 37, a court may grant sanctions against a party that "fails to obey an order to provide or permit discovery." Fed. R. Civ. P. 37(b). Sanctions may be granted under Rule 37(b)(2) if there is noncompliance with a court order, notwithstanding a lack of willfulness or bad faith, although such factors "are relevant ... to the sanction to be imposed for the failure." *See In re Seroquel Products Liability Litigation*, 244 F.R.D. 650, 656 (M.D. Fla. 2007). This Court has broad discretion to fashion appropriate sanctions for the violation of discovery orders under Rule 37 and also under 11 U.S.C. § 105. *Id.*

30. This Court may also impose sanctions for litigation misconduct under its inherent power. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991); *In re Sunshine Jr. Stores, Inc.*, 456 F.3d 1291, 1304 (11th Cir. 2006). The court's inherent power derives from the court's need "to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (citations omitted).

31. The ProCom Examinees have brazenly disregarded this Court's Orders and directions and intentionally refused to cooperate in the Trustee's duly noticed Rule 2004 examinations, and the ProCom Examinees, and their counsel, should be both compelled and sanctioned accordingly.

32. Consistent with the requirements of Rules 2004-1 and 7026-1 of the Local Rules of

---

<sup>1</sup> Pursuant to Fed.R.Civ.P. 37(b), this Court has the power to strike pleadings and render default judgment against a party for failure to obey an order or permit discovery. *See Nat'l Hockey League, et al. v. Metro. Hockey Club, Inc., et al.*, 427 U.S. 639 (1976); *see also Phipps v. Blakeney*, 8 F. 3d 788, 790-91 (11th Cir. 1993). Although the sanction of dismissal is extreme, this Court has "... the discretion to dismiss a complaint where the party's conduct amounts to 'flagrant disregard and willful disobedience' of the court's discovery orders." *Hashemi v. Campaigner Pubs., Inc.*, 737 F. 2d 1538, 1539 (11th Cir. 1984)

the United States Bankruptcy Court for the Middle District of Florida, the undersigned counsel communicated with ProCom Examinees' respective counsel to determine whether they consented to relief requested herein, to wit: a finding of contempt and an order compelling attendance a Rule 2004 examination consistent with this Court's prior rulings. As of the filing of this Motion, the undersigned is unsure of ProCom Examinees' respective counsel's position.

WHEREFORE, the Trustee hereby requests this Court enter an Order (i) compelling production of documents responsive to the Rule 2004 Examination, [ECF No. 403], by the ProCom Examinees; (ii) deeming the ProCom Examinees' objections as waived; (iii) finding the ProCom Examinees in civil contempt and providing for daily monetary sanctions against the respective ProCom Examinees until they comply with this Court's Orders; (iv) directing the turnover, *in camera*, of all communications between the ProCom Examinees and counsel regarding the pendency of discovery, clearing available schedules, this Court's orders and the need to comply, (v) providing sanctions against the ProCom Examinees' respective counsel based on their assistance in the ProCom Examinees' vexatious conduct under 28 U.S.C. § 1927; (vi) awarding the Trustee's reasonable attorney's fees and costs in bringing this *second* motion to compel; and (vii) granting such further and other relief this Court deems necessary and proper.

Date: July 14, 2022.

Respectfully submitted,  
**SHUMAKER, LOOP & KENDRICK, LLP**  
/s/ Steven M Berman  
**STEVEN M. BERMAN, ESQUIRE**  
Florida Bar No.: 856290  
Primary E-Mail: sberman@shumaker.com  
101 E. Kennedy Blvd., Suite 2800  
Tampa, Florida 33602  
Phone (813) 229-7600  
Facsimile (813) 229-1660  
*Counsel for Trustee Douglas N. Menchise,*  
*Ch. 7 Trustee*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 14, 2022, the foregoing was furnished via CM/ECF service to all counsel of record and will be furnishing on July 15, 2022, by U.S. Mail per Limited Notice Order, [ECF No. 138].

/s/ Steven Berman

Steven M. Berman, Esq.