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FILED
LOS ANGELES SUPERIOR COURT
JUN 19 1998
JOHNA CLARKE, CLERK
BY D. HARO, DEPUTY

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 ANTHONY MARIO ASSENZA,) CASE NO. BC 115813
12 Plaintiff/Petitioner,)
13 vs.) DATE: JUNE 26, 1998
14 CITY OF LOS ANGELES, et al.,) TIME: 10:00 A.M.
15 Defendants/Respondents.) DEPT: 15
16 _____)
17) MEMORANDUM OF POINTS AND
18) AUTHORITIES IN RESPONSE TO
19) ORDER TO SHOW CAUSE RE:
20) CONTEMPT; DECLARATION OF
21) BYRON R. BOECKMAN IN SUPPORT
22) THEREOF

23 STATEMENT OF FACTS

24 On February 1, 1995, the parties in this action entered into
25 a "Stipulation for Entry of Judgment" which provided that a
26 declaratory judgment might be entered into in settlement of this
27 action. That stipulation is contained at "Exhibit 1" in Support of
28 Order to Show Cause re Contempt. On March 3, 1995, this Court
entered its "Judgment of Declaratory Relief (Pursuant to
Stipulation)" which is attached as Exhibit "2" to Plaintiffs
Exhibits in Support of Order to Show Cause re Contempt.

The Judgment was modified without objection on February 4,
1998 and the amended judgment is attached as Exhibit "3" to

COPY

1 Plaintiffs Exhibits in Support of Order to Show Cause re Contempt.

2 Plaintiffs now assert that Respondents should be held in
3 contempt for essentially two reasons (although set out in 24
4 counts). The first reason is that the defendants did not adequately
5 or correctly inform the plaintiffs of the standards adopted for
6 issuance of permits. Counts 1 through 6. The second is failure to
7 renew the plaintiffs permits. Counts 7 through 24.

8

9

ARGUMENT

10 1. The Judgment is Not Enforceable by Way of
11 a Citation for Contempt.

12 Plaintiffs seek to compel Respondents to show cause why they
13 should not be held in contempt and be punished for willful violation
14 of this courts orders. Declaration re Contempt, page 10, lines 16-
15 18. Plaintiffs point to no authority, however, that declaratory
16 relief is coercive in nature and, in fact, the available authority
17 makes clear that declaratory judgments are not coercive or self
18 executing Lortz v. Connell (1969) 273 Cal.App.2d 286, 300-301.
19 "It is generally recognized that since coercive relief may or may
20 not be requested in an action for declaratory relief, a party may
21 not be barred from seeking such relief by further proceedings in the
22 same or new action. 'Consequential or incidental relief may be
23 obtained in an action in which a declaratory judgment is sought, but
24 the failure to seek such relief in an action or suit does not
25 constitute a bar to other proceedings to enforce the rights
26 determined by the judgment, whether such other proceeding is by
27 petition filed in the declaratory relief action or in a separate and
28 independent suit or action subsequently filed, but predicated,

1 however, upon the declaration of rights contained in the declaratory
2 judgment.' (2 Anderson, Actions for Declaratory Judgments (2d ed.
3 1951) §461, p. 1103, citing Winborn v. Doyle (1950) 190 Va. 86 [59
4 S.E.2d 90] See also Howe v. Nelson (1965) 271 Minn. 296 [135 N.W.2d
5 687]; Rest., Judgments, §77, com. b. pp. 343-344; 22 Am.Jur.2d,
6 Declaratory [**28] Judgments, §102, p. 902; and cases collected
7 Annotation, Declaratory Judgments -- Res Judicata (1950) 10 A.L.R.2d
8 782, particularly §3, pp. 787-789; Contra, Lane v. Page (1952) 126
9 Colo. 560 [251 P.2d 1078]. Cf. Swanson v. Tearney (1948) 87
10 Cal.App.2d 191, 195-196 [196 P.2d 49].)" Lortz v. Connell, id., at
11 273 Cal.2d pp. 300-301.

12 "Ordinarily, [an] alternative remedy, such as damages,
13 injunctive relief and the like would be more harsh, and if
14 [plaintiff] chooses the milder remedy, declaratory relief, the court
15 is not required for that reason to compel him to seek a more
16 stringent one." Ermolieff v. R.K.O. Radio Pictures (1942) 19 Cal.2d
17 543, 547

18 The California rule on the non-coercive effect of
19 declaratory judgment parallels the federal rule. Under Title 28
20 U.S.C. §2201 and implementive Rule 57 of Federal Civil Procedure,
21 declaratory relief is a non-coercive remedy. While "[w]ritten
22 instruments, including ordinances and statutes, may be construed" in
23 an action for declaratory relief. Notes of the Advisory Committee
24 on Civil Rules, Rule of Civil Procedure 57, Federal Civil Judicial
25 Procedure and Rules, West Group, 1998 Edition.

26 The development of actions for declaratory relief in the
27 1930's was the result of the urgings of Professors Edwin Barchard of
28 . . .

1 Yale and Edson Sunderland of Michigan, who crusaded for uniform
2 state and federal rules for declaratory relief.

3 In the original complaint on file with the Court in this
4 case, the plaintiffs sought both declaratory and injunctive relief.
5 In the end, however, and pursuant to the stipulation of the parties,
6 the relief granted was declaratory in nature, not coercive and
7 therefor not enforceable by way of contempt.

8

9 2. Denial of Certain Plaintiff's Permits is
10 not the Proper Subject of Contempt.

11 Even were the judgment in this case coercive in nature, i.e.
12 injunctive, those provisions relating to the renewal of the
13 plaintiffs permits have been satisfied and denial of such renewal at
14 this time would not be subject of enforcement by contempt.
15 Paragraph D of the Judgment declared that the plaintiffs should
16 receive licenses and that their licenses would "be renewed for a one
17 year term. . .". It does not say, and it would be unreasonable to
18 interpret the agreement contrary to its terms to mean that their
19 permits would be renewed indefinitely, without subsequent review of
20 the continuation of good cause In order to achieve a compromise,
21 the defendants agreed to issuance of permits to the plaintiffs for
22 two years rather than litigating the merits of each of the thirty
23 plaintiffs' applications. That portion of the agreement relating to
24 issuance of plaintiffs' permits has been satisfied. Any future
25 challenge to the decision of the issuing authority should be pursued
26 by way of traditional mandamus. Admittedly in such proceedings the
27 respondents are bound by the definition of good cause contained in
28

1 the stipulated judgment and that provision of the judgment is res
2 judicata.

3 It is precisely because of the unreasonableness of having
4 the decisions of the Chief of Police or Board of Police
5 Commissioners, in their exercise of discretion, reviewed as a matter
6 of potential contempt that the defendants did not agree to coercive
7 relief. Defendants believed and continue to believe that the
8 purpose of the judgment stipulated to in this case was to establish
9 the guidelines under which exercises of discretion would occur. It
10 was and is their further belief, however, that individual decisions
11 under those guidelines would be subject to review of traditional
12 mandamus.

13 This interpretation is further supported by a reading of the
14 agreement as a whole. Paragraph 5 of the agreement provides that
15 persons (all persons) issued licenses shall have their licenses
16 renewed so long as they continue to have good cause. Clearly this
17 provision wrests discretion in defendants to require the applicants
18 for renewal to demonstrate good cause whereas, with respect to the
19 plaintiffs, renewal for one year was required unless defendants
20 found that they no longer had good cause.

21

22 3. Defendants are Prepared to Distribute the
23 Guidelines with each Application.

24 It is true that the defendants have not been providing
25 copies of the guidelines with the application forms. This fact has
26 been known to the Plaintiffs who have acquiesced while the City was
27 in the process of implementing the judgment. See Declaration of
28 Byron R. Boeckman, attached hereto as Exhibit "A". However, the

1 defendants will commence distributing the guidelines with the
2 applications after a new form has been printed.


3
4 CONCLUSION

5 For all of the foregoing reasons Defendants request that
6 Plaintiff's accusations of contempt be dismissed.

7
8 Dated: June 19, 1998

Respectfully submitted,

9 JAMES K. HAHN, City Attorney
10 FREDERICK N. MERKIN, Senior
Assistant City Attorney
11 BYRON R. BOECKMAN
Assistant City Attorney

12
13 By 
14 BYRON R. BOECKMAN
Assistant City Attorney

15 Attorneys for Defendant
16 CITY OF LOS ANGELES
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**PROOF OF SERVICE
(VIA VARIOUS METHODS)**

I, the undersigned, say I am over the age of 18 years and not a party to the within action or proceeding My business address is 1800 City Hall East, 200 North Main Street, Los Angeles, California 90012

On June 19, 1998, I served the foregoing documents described as

**MEMORANDUM OF POINTS AND AUTHORITIES IN
RESPONSE TO ORDER TO SHOW CAUSE RE: CONTEMPT;
DECLARATION OF BYRON R. BOECKMAN
IN SUPPORT THEREOF**

on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows

**BURTON C. JACOBSON
WILLIAM ARTHUR CRAWFORD
Beverly Hills Law Building
424 South Beverly Drive
Beverly Hills, California 90212-4414**

BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid I am readily familiar with the business practice for collection and processing of correspondence for mailing Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit, and/ or

BY PERSONAL SERVICE - () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5 00 p m on the date specified above

BY FACSIMILE TRANSMISSION - I caused such document to be transmitted to the offices of the addressee via facsimile machine, prior to 5 00 p m on the date specified above

BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up Hand delivery was guaranteed by the next business day

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made

I declare under penalty of perjury that the foregoing is true and correct

Executed on June 19, 1998, at Los Angeles, California


JOAN E WEST-MILLER