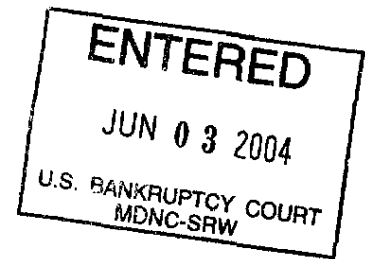


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION



IN RE: )  
 )  
Brenda McClain Perry ) Case No. 04-80461-7D  
 )  
Debtor. )  
 )

ORDER

This case came before the court on May 20, 2004, for hearing upon a motion by Debtor for sanctions against Citibank CitiCards for violation of the automatic stay. James B. Craven III appeared on behalf of the Debtor. No appearance was made on behalf of Citibank CitiCards ("Creditor"). Having considered the motion, the evidence offered by the Debtor, and matters of record in this case, the court finds and concludes as follows:

1. This Chapter 7 case was filed on February 17, 2004.
2. Creditor was listed in the Debtor's schedules as a general unsecured creditor in the amount of \$2,957.42. The address listed for Creditor in Debtor's schedules was Box 8113, Hackensack, New Jersey 07606-8113, and notice of the Debtor's Chapter 7 bankruptcy case was served on Creditor at that address on February 19, 2004. No notices served at that address have been returned as undeliverable.
3. Subsequent to the petition date, Creditor telephoned Debtor's home nine times in an attempt to collect the debt. On those occasions when Debtor was home to receive the telephone

calls, Debtor informed Creditor's representatives that she had a pending bankruptcy case, gave them her attorney's name and contact information, and requested that Creditor refrain from calling her to collect the debt.

4. Creditor has continued to send billing statements to Debtor post-petition, advising that her account is past due.

5. Creditor sent a letter dated May 17, 2004 from its Albuquerque, New Mexico office advising Debtor that her account was past due.

6. Upon the filing of this case, the automatic stay became effective pursuant to § 362 of the Bankruptcy Code. Pursuant to § 362(a)(6) the automatic stay is applicable to and prohibits any act to collect, assess, or receive a claim against the debtor that arose before the commencement of the bankruptcy case. Creditor has neither sought nor obtained relief from the automatic stay in this case.

7. Creditor's letters and telephone calls from Creditor to the Debtor constituted acts to collect, assess, or recover a claim against the Debtor that arose before the commencement of the bankruptcy case, and thus were violations of the automatic stay.

8. The violations of the automatic stay by the Creditor were willful violations because such violations occurred after Creditor was provided both written and verbal notice that this bankruptcy case had been filed and that the filing of the case automatically

stayed the collection of the debt owed by the Debtor.

9. Pursuant to § 362(h) of the Bankruptcy Code, an individual injured by a willful violation of the stay is entitled to recover actual damages, including costs and attorney's fees, sustained as a result of the violation.

10. As a proximate result of the Creditor's violations of the automatic stay, Debtor incurred attorney's fees in the amount of \$500.00 for the services of her attorney related to the filing of the motion now before the court and the hearing on the motion which was held on May 20, 2004. The court finds that Debtor is therefore entitled to compensatory damages consisting of attorney's fees in the amount of \$500.00.

11. Under § 362(h) an award of punitive damages is within the discretion of the trial court and proper only in appropriate circumstances, such as those in which the creditor has demonstrated egregious, vindictive, or intentional misconduct. See Lovett v. Honeywell, 930 F.2d 625, 628 (8th Cir. 1991); In re McHenry, 179 B.R. 165, 168 (9th Cir. BAP 1995); Davis v. IRS, 136 B.R. 414, 423 fn.20 (E.D. Va. 1992). In this case, Creditor was properly served with both notice of this bankruptcy case and notice of this motion for sanctions. Creditor is a large and sophisticated national consumer credit company who is a frequent creditor in bankruptcy courts. As such, the court would expect Creditor to understand and respect the automatic stay. Yet, even after receiving notice of

this motion for sanctions, Creditor has continued to contact the Debtor by telephone and mailings in an attempt to collect the debt. Creditor has shown no remorse for its numerous violations of the automatic stay, and has made no efforts to defend its conduct. Despite being properly served with this motion for sanctions, Creditor failed to appear at the hearing or otherwise respond.

The automatic stay is a basic protection provided to debtors under the Code, and for a creditor to blatantly ignore the automatic stay, as Creditor has done and continued to do, justifies a punitive damage award to get the creditor's attention, encourage the creditor to correct its conduct, and to deter future violations. See In re Edmondson, 2002 WL 32389899 (Bankr. D.S.C.). See also In re Graves, 2003 WL 21781968 (Bankr. N.D. Iowa) (debtors were entitled to punitive damages where creditor contacted debtors through numerous phone calls and letters seeking payment of a debt in violation of the automatic stay).

The primary purpose of awarding punitive damages for a willful violation of the automatic stay is "to cause a change in the creditor's behavior; the prospect of such change is relevant to the amount of punitive damages to be awarded." In re Shade, 261 B.R. 213, 216 (Bankr. C.D. Ill. 2001). See also In re Mann, 2004 WL 574354 (Bankr. M.D.N.C. 2004); In re Riddick, 231 B.R. 265, 269 (N.D. Ohio 1999). Considering all the evidence, the court concludes that punitive damages in the amount of \$2,000.00 are

appropriate in this case to penalize Creditor for its willful and continued violation of the automatic stay and to deter Creditor from similar conduct in the future. As a further deterrent, the court finds that in addition to that award, any further act by Citibank CitiCards attempting to collect, assess, or recover the debt will result in additional sanctions of \$10,000.00 per violation.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

1. That the Debtors have and recover from Citibank CitiCards the sum of \$500.00 for attorney's fees;

2. That the Debtors have and recover from Citibank CitiCards the additional sum of \$2,000.00 as punitive damages as of the date of this order;

3. After 20 days from service of this order, any further act by Citibank CitiCards to collect, assess, or recover its prepetition claim against the Debtor will result in additional sanctions of \$10,000.00 per occurrence.

This 28th day of May, 2004.



WILLIAM L. STOCKS

United States Bankruptcy Judge