

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
MAR 02 2000
U.S. Bankruptcy Court
Greensboro, NC
AHH

IN RE:)
)
Michael Wesley Niegro,) Case No. 99-12348C-13G
f/k/a Michael W. Midgett,)
and Melissa W. Niegro,)
)
Debtors.)
)

SECOND ORDER AWARDING DAMAGES
AGAINST CROSS COUNTRY BANK

This case came before the court on February 29, 2000, for hearing upon Debtors' second motion for sanctions against Cross Country Bank ("Cross Country") for violations of the automatic stay. The Debtors and their attorney, J. Gordon Boyett, appeared for the hearing. No appearance was made on behalf of Cross Country. Having considered the motion, the evidence offered by the Debtors, the matters of record in this case, and the argument of counsel, the court finds and concludes as follows:

1. The Debtors filed an earlier motion for sanctions against Cross Country which was heard on December 29, 1999. On January 3, 2000, this court entered an order finding that even though Cross Country was notified of the filing of Debtors' Chapter 13 case, Cross Country had continued to debit Debtors' checking account through the issuance of a total of eight debit checks of \$50.00 each. This court found that each of the foregoing debits from

Debtors' checking account by Cross Country was an act on the part of Cross Country to collect or recover a claim against the Debtors that arose before the commencement of this case and also constituted an act to obtain property of the estate and that, as such, each of the debits from Debtors' checking account constituted a willful violation by Cross Country of the automatic stay provided for under § 362 of the Bankruptcy Code. As a result of such violations of the automatic stay, the order which was entered in this case on January 3, 2000, awarded damages of \$3,223.00 and ordered that any claim filed by Cross Country in this case be disallowed.

2. On January 3, 2000, the foregoing order was served on Cross Country by mailing a copy thereof in the United States mail by first class mail, postage prepaid.

3. On January 24, 2000, Cross Country filed two proofs of claim in this case, one in the amount of \$431.01 and one in the amount of \$896.76. The account numbers referred to in the proofs of claim are the same account numbers listed in the debits which have been issued against Debtors' checking account.

4. Notwithstanding having actual notice of this case, including correspondence from the Chapter 13 Trustee and service of the January 3, 2000 order, both of which specifically refer to the

automatic stay being in effect, Cross Country has continued to debit the Debtors' checking account and thereby has continued to violate the automatic stay. In that regard, Cross Country has debited the Debtors' checking account on four occasions in addition to the debits referred to in the order entered on January 3, 2000. The four additional debits were in the amount of \$50.00 each and occurred on or about December 27, 1999, January 10, 2000, February 7, 2000, and February 23, 2000.

5. Each of the four additional debits from Debtors' checking account by Cross Country was an act on the part of Cross Country to collect or recover a claim against the Debtors that arose before the commencement of this case and also constituted an act to obtain property of the estate, and each of the debits occurred after Cross Country had actual notice that Debtors had filed a bankruptcy case and that such actions were prohibited. As such, each of the four additional debits from Debtors' checking account constitutes a willful violation by Cross Country of the stay provided for under § 362 of the Bankruptcy Code.

6. As a result of the four unlawful debits from Debtors' checking account, Cross Country removed from Debtors' checking account and collected the sum of \$200.00. In addition, as a proximate result of the violations of the automatic stay by Cross

Country, the male Debtor missed work and sustained a loss of income of \$50.00 and the female Debtor missed work and sustained a loss of income of \$100.00. Additionally, as a proximate result of the continuing violation of the automatic stay by Cross Country, the Debtors have incurred attorneys' fees and are entitled to recover from Cross Country an attorneys' fee of \$600.00, representing the reasonable value of the services rendered by the attorney for the Debtors in connection with the filing of the second motion for sanctions and the representation of the Debtors at the hearing on the second motion.

7. Section 362(h) provides for the award of punitive damages under appropriate circumstances involving egregious, vindictive or intentional misconduct. The course of conduct of Cross Country in which Cross Country has continued to issue debits against Debtors' checking account even after telephonic notice from the Debtors, a letter from the Chapter 13 Trustee's office and a copy of the January 3, 2000, order awarding damages because of Cross Country's earlier violations of the automatic stay is particularly aggravated and egregious. The continuing issuance of debits against Debtors' checking account during January and February created great uncertainty and concern on the part of the Debtors as to the actual balance in their checking account and whether the account would be

overdrawn as a result of the unexpected debits, and has resulted in the Debtors experiencing significant frustration, discomfort and anguish. Such conduct on the part of Cross Country is aggravated and egregious and warrants the imposition of additional punitive damages of \$4,000.00 at this time. In addition, in the event that Cross Country causes any additional debits against the Debtors' checking account subsequent to March 15, 2000, Cross Country shall be liable for additional punitive damages of \$3,000.00 for each such debit which is caused by Cross Country against the Debtors' checking account subsequent to March 15, 2000.

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

1. That the Debtors have and recover from Cross Country Bank the sum of \$950.00 as actual damages;

2. That the Debtors have and recover from Cross Country Bank the additional sum of \$4,000.00 as punitive damages as of the date of this order;

3. Cross Country Bank is hereby ORDERED to cease debiting Debtors' checking account and is directed immediately to take such action as is necessary to ensure that no further debits occur; and

4. In the event additional debits are made against Debtors' checking account by or on behalf of Cross Country Bank subsequent

to March 15, 2000, the Debtors shall have and recover additional punitive damages of \$3,000.00 for each such debit which occurs.

This 2nd day of March, 2000.

William L. Stocks

WILLIAM L. STOCKS

United States Bankruptcy Judge