

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**

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JEFFREY PAUL ROCHE  
*Debtor(s).*

Bankruptcy No. 93-10546LC  
Chapter 7

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**ORDER RE: MOTION FOR SANCTIONS FOR VIOLATION OF  
AUTOMATIC STAY**

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On June 4, 1993, the above-captioned matter came on for hearing pursuant to assignment. The hearing was held by telephone conference call which was recorded. The Debtor appeared by Attorney John L. Thompson. Creditor, Commonwealth Edison was represented by its agent and manager, Dave Walters, as well as Commonwealth Edison's Attorney, Mr. Robert Hoffman. The Trustee, William D. Martin, was also present at the commencement of the hearing. However, Mr. Martin was subsequently excused from further participation.

**ISSUES**

The Debtor, Jeffrey Paul Roche, filed the present Motion on May 11, 1993. Debtor asserts that Creditor Commonwealth Edison violated the automatic stay provisions of the Bankruptcy Code by sending a letter to the Debtor at his home address subsequent to the imposition of the automatic stay. The Debtor seeks reasonable monetary damages as well as attorney fees.

**FINDINGS OF FACT**

The facts presented in this ruling were not presented in an evidentiary context. However, the facts do not appear to be in significant dispute. The Debtor signed the petition for this Chapter 7 bankruptcy on March 30, 1993. The schedules were forwarded to the Bankruptcy Court and were officially filed in Cedar Rapids at 8:00 a.m. on April 1, 1993. The schedules list Commonwealth Edison of Chicago, Illinois as an unsecured non-priority creditor. The amount of the claim owed to Commonwealth Edison is listed in the amount of \$52.34 plus accrued and accruing interest. The notice of commencement of a case under Chapter 7 of the Bankruptcy Code is contained in the file and is filed marked April 1, 1993. Commonwealth Edison is also listed as a creditor in this notice of commencement of the Chapter 7 proceeding.

Commonwealth Edison states that on April 23, 1993, it sent Debtor's account to the Credit Bureau of Northwest Illinois, Inc. which ordinarily services delinquent accounts for Commonwealth Edison. The Credit Bureau received this account from Commonwealth Edison several days later and on April 28, 1993 sent the offending letter to the Debtor in Tama, Iowa. The letter was received by the Debtor in due course at his home in Tama.

Apparently on the same date of April 28, 1993, Commonwealth Edison's audit department in Dekalb, Illinois received the first notice of the pendency of these bankruptcy proceedings. It is stated to the

Court that on the same date Commonwealth Edison sent an electronic notice to the Credit Bureau of Northwest Illinois, Inc. of the pendency of this bankruptcy proceeding and no subsequent correspondence was sent to the Debtor.

The contents of the letter sent by the Credit Bureau speak for themselves. A copy of the letter was attached to the motion filed on May 11, 1993. Commonwealth Edison asserts that while it does not dispute that the notice was sent after commencement of the bankruptcy and after imposition of the automatic stay, they claim that they had no willful intent and did not knowingly violate the automatic stay because the letter was sent prior to their acquisition of any knowledge of the filing of the bankruptcy by the Debtor.

The Debtor asks for a small monetary sanction in the amount of \$100 to \$150 plus attorney fees. Commonwealth Edison asserts that while clearly a nominal amount this is still excessive based upon the amount of the underlying bill. Additionally, Commonwealth Edison says that they should not be sanctioned because they did not know of the pendency of this proceeding and if the Debtor or his attorney had simply called Commonwealth Edison, this matter could have been simply resolved.

### CONCLUSIONS OF LAW AND RULING

The Debtor seeks monetary damages under 11 U.S.C. § 362(h). This section states: "An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." In determining whether to award damages under this section, the Court must decide whether the creditor violated the stay, whether the violation was willful and whether the debtor was injured.

The automatic stay applies to any act to collect a claim against the debtor that arose before the commencement of the case. 11 U.S.C. § 362(a)(6). Legislative history clearly explains Congress' intent:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from creditors. It stops all collection efforts, all harassment and all foreclosure actions.

In re Olson, 38 B.R. 515, 517 (Bankr. N.D. Iowa 1984). Bankruptcy courts are loath to tolerate automatic stay violations. In re Claussen, 118 B.R. 1009, 1014 (Bankr. D. S.D. 1990). Unless bankruptcy courts vigorously apply congress' automatic stay, the Bankruptcy Code would prove meaningless.

The notice sent on behalf of Commonwealth Edison constitutes a collection effort which violates the automatic stay. Whether the violation was willful under § 362(h) depends on the creditor's knowledge of the debtor's filing of a bankruptcy petition. In re Sapp, 91 B.R. 520, 522-23 (Bankr. E.D. Mo. 1988). A violation of the automatic stay does not itself automatically support an award of monetary damages. In re NWFEX, Inc., 81 B.R. 500, 503 (Bankr. W.D. Ark. 1987). The court must find that the creditor acted with knowledge of the automatic stay.

Commonwealth Edison asserts that it did not have knowledge of the Debtor's bankruptcy petition prior to its collection effort. The Debtor has offered no evidence to refute this. The Court does note that an unusually long period of time elapsed between April 1 when the Notice of Commencement of Case was filed and April 28 when Commonwealth Edison asserts it first received notice of the

bankruptcy. Two more days passed between the time Commonwealth Edison admits to having notice and the postmark of the collection letter, April 30. Commonwealth Edison had sent Debtor's account to the Credit Bureau for collection, creating an additional step in the notice process. Any delay caused by this additional step cannot excuse Commonwealth Edison's violation of the stay. See In re Withrow, 93 B.R. 436, 439 (Bankr. W.D. N.C. 1988) (creditor cannot create a complex system likely to produce stay violations and then assert the results of that complexity as a defense).

Assuming without deciding that Commonwealth did have notice of the bankruptcy petition prior to the time the collection letter was mailed on its behalf, the Court turns to the issue of damages. The Eighth Circuit recently considered whether to award damages under § 362(h). Lovett v. Honeywell, Inc., 930 F.2d 625, 628 (8th Cir. 1991). The court held that there was insufficient evidence to support an award of actual damages, and therefore, an award of attorneys' fees was not appropriate.

The evidence of damage before the bankruptcy court consisted of the time expended by trustee's counsel in bringing this motion. No evidence existed of time actually expended in defending the [creditor's] administrative action [against the debtor]. We do not believe that the time expended bringing the motion for . . . contempt sanctions, in the absence of any other damage, is the type of damage contemplated by section 362(h).

Id. (citing In re Whitt, 79 B.R. 611, 616 (Bankr. E.D. Pa. 1987)).

Lovett was followed in In re Hen House Interstate, Inc., 136 B.R. 220, 224 (Bankr. E.D. Mo. 1992). The court noted that the Eighth Circuit reads § 362(h) narrowly. Proof of damages fails when the only damages claimed result from the effort expended to bring the motion for sanctions. Id. at 223. Although the creditor had willfully violated the stay, the court was precluded from awarding costs and attorney fees because the debtor had failed to demonstrate damages other than the fees and costs related to the § 362(h) motion. Id. at 224.

No damages may be awarded if there is no evidence that the debtor suffered any harm. Whitt, 79 B.R. at 616. In Whitt, the court characterized the stay violations, i.e. statements of overdue lease payments and letters threatening eviction proceedings, as de minimus. Id. The court stated that this was not such a serious violation that damages could be presumed. Id. Under the statute, costs and attorney fees are awarded only to embellish actual damages proved. Id.; Lovett, 930 F.2d at 629. "[T]he possibly innocent and mild violations of the automatic stay here, coupled with the [debtor's] failure to produce any evidence of actual damages, precludes any award of monetary damages, costs or attorney's fees." Whitt, 79 B.R. at 612-13. See also In re Red Ash Coal & Coke Corp., 83 B.R. 399, 403 (W.D. Va. 1988) (sanctions are inappropriate for mere technical violations of the automatic stay).

Courts generally follow this no harm-no foul rule. If the debtor has no injury, no attorney fees are awarded. In re McLaughlin, 96 B.R. 554, 561 (Bankr. E.D. Pa. 1989). Rather than encouraging a cottage industry in satellite fee litigation, bankruptcy courts limit awards of attorney fees and costs to situations where the debtor's rights would not have been vindicated without the litigation initiated by debtor's counsel. Id. at 561 (modest attorney fees allowed; disallow time spent in pursuit of attorney fees); In re James, 112 B.R. 687, 707 (Bankr. E.D. Pa. 1990) (but for motion for sanctions, debtor would have been bound by default judgment).

Even assuming Commonwealth Edison's collection notice was a willful violation of the automatic stay, the violation was very mild. The Debtor received only one notice. The content of the notice was not abusive or harassing. The Debtor did not need to resort to the courts to enforce his rights to the automatic stay. To the contrary, Commonwealth Edison's collection efforts ended immediately

without court interference. The Debtor has failed to produce any evidence of actual damages. This failure precludes any award of monetary damages, costs or attorney fees under § 362(h).

**WHEREFORE**, Debtors Motion for Sanctions for Violation of the Automatic Stay is denied.

**SO ORDERED** this 10th day of June, 1993.

Paul J. Kilburg  
U.S. Bankruptcy Judge

I certify that on copies of this order were sent by U.S. mail to: