

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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KURTIS ALAN SMITH

Bankruptcy No. 97-01110-C

*Debtor(s).*

Chapter 7

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### ORDER RE MOTION FOR FINDING OF CIVIL CONTEMPT

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The above-captioned matter came on for hearing on October 1, 1997 pursuant to assignment on Debtor's Motion for Finding Civil Contempt. Debtor appeared in person with Attorney Steven Klesner. Credit Bureau Enterprises, Inc. appeared by its attorney, Donna C. Hill, and its attorney, Aaron Hawbaker.

Evidence was presented after which the Court dictated its findings of fact and conclusions of law into the record. The Court concluded that the conduct asserted did not constitute a violation of the automatic stay under §362 or §727 of the Bankruptcy Code. However, as a discharge had been entered at the time of the alleged conduct, §524 of the Bankruptcy Code did apply as a violation of post-discharge injunction. Though this section was not specifically pled by Debtor, the parties agreed they would waive any defects in notice and submit to the Court's jurisdiction under the alternative theory of a violation under §524 of the Code.

As indicated, the Court dictated its findings of fact and conclusions of law into the record. The Court concluded, for the reasons set forth in the record, that the law and facts support a finding of violation of §524 of the Code and that Credit Bureau Enterprises, Inc. committed an act of contempt by seeking to collect an obligation after the same was discharged in violation of §524 of the Bankruptcy Code.

In its initial findings, the Court concluded that Debtor was entitled to lost wages and attorney's fees as well as damages for emotional upset caused by this conduct. The Court reserved ruling on the issue of punitive damages until the Court had an opportunity to do further research on this issue.

This Court has noted that violations of the automatic stay under §362(h) and violations of the discharge injunction under §524(a) are treated similarly as contempt. In re Olson, 38 B.R. 515, 518 (Bankr. N.D. Iowa 1984). Punitive damages may be appropriate in §362(h) violations of the automatic stay if the underlying conduct is "egregious, intentional misconduct." In re Dencklau, 158 B.R. 796, 801 (Bankr. N.D. Iowa 1993) (citing In re Ketelsen, 880 F.2d 990, 993 (8th Cir. 1989)).

Unlike §362(h), §524 does not expressly authorize any relief other than injunctive relief. In re Arnold, 206 B.R. 560, 567 (Bankr. N.D. Ala. 1997). The modern trend is for courts to award actual damages. Id. Attorney fees are awarded when a defendant willfully disobeys a court order, such as an order granting discharge in bankruptcy. In re Walker, 180 B.R. 834, 849 (Bankr. W.D. La. 1995); In re Atkins, 176 B.R. 998, 1009 (Bankr. D. Minn. 1994) (stating that the injunction created by an a discharge order is a specific court order for the purposes of an adjudication of contempt).

"Additionally, the majority of courts allow punitive damages for violation of §524." Arnold, 206 B.R. at 657. Punitive damages have been awarded where an attorney acted willfully and in clear disregard and disrespect of bankruptcy laws, In re Miller, 89 B.R. 942, 944 (Bankr. M.D. Fla. 1988), and where the debtor demonstrated "malevolent intent". In re Owen, 169 B.R. 261, 263 (Bankr. D. Me. 1994). Owen noted the similarity with the "egregious, intentional misconduct or bad faith" standard applied in awarding punitive damages for violations of the automatic stay. Id. The court in Arnold found punitive damages were necessary and appropriate where a credit union acted wilfully and maliciously such that the conscience of the court was shocked. 206 B.R. at 569.

The Court concludes that, even though punitive damages are allowable for a violation of 11 U.S.C. §524, Debtor in the present case has not demonstrated that Credit Bureau Enterprises acted with the required "malevolent intent" or that its actions constitute "egregious, intentional misconduct or bad faith" such that punitive damages are appropriate in this case.

In summary, the Court concludes that Debtor has established a violation of the post-discharge injunction provided in 11 U.S.C. §524. The Court concludes that Debtor is entitled to attorney's fees in the amount of \$261. The Court also finds that actual damages for lost wages and emotional distress caused by this conduct are compensable in the total amount of \$375. The Court concludes that Debtor has failed to establish the egregious level of conduct necessary to support punitive damages and none will therefore be awarded.

**WHEREFORE** the Court finds that Debtor has established that Credit Bureau Enterprises, Inc. is in contempt of Court for violation of the post-discharge injunction.

**FURTHER**, actual damages are awarded in favor of Debtor Kurtis Alan Smith and against Credit Bureau Enterprises, Inc. in the amount of \$375.

**FURTHER**, attorney's fees are awarded in favor of Debtor Kurtis Alan Smith and against Credit Bureau Enterprises, Inc. in the amount \$261.

**FURTHER**, Debtor has failed to prove that punitive damages are appropriate in this case and none are awarded.

**FURTHER**, judgment for all of the foregoing shall enter in favor of Debtor Kurtis Alan Smith and against Credit Bureau Enterprises, Inc.

**FURTHER**, the costs of this contempt proceeding are assessed against Credit Bureau Enterprises, Inc.

**SO ORDERED** this 7th day of October, 1997.

Paul J. Kilburg  
U.S. Bankruptcy Judge