In the United States Bankruptcy Court

for the Northern District of Iowa

JOHN LEROY TOMLINSON
LEE ANN TOMLINSON
Debtor(s).

Bankruptcy No. 95-62170-W

Chapter 13

ORDER RE MOTION TO IMPOSE SANCTIONS

On April 1, 1998, the above-captioned matter came on for hearing pursuant to assignment. Debtors, John Leroy Tomlinson and Lee Ann Tomlinson, appeared in person with their attorney, Wallace D. Parrish. Creditor Bureau Enterprises, Inc. (Credit Bureau) appeared by its employee, Kathy Fulks, and its attorney, Kenneth P. Nelson. The matter before the Court is Debtors' motion to impose sanctions against Credit Bureau Enterprises, Inc. for an alleged violation of the automatic stay pursuant to 11 U.S.C. §362(a)(6) and §362(h). Evidence was presented and the parties were allowed two weeks to submit briefs and arguments. Both counsel for Debtors and counsel for the Credit Bureau have now filed briefs and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(O).

FINDINGS OF FACT

Debtors first filed a Chapter 7 bankruptcy in September of 1993 and were granted a discharge. Debtor John Tomlinson subsequently incurred extraordinary medical bills because of complications of diabetes. Because of the size of the medical bills, Debtors filed the present Chapter 13 petition on November 7, 1995. A substantial percentage of the scheduled debt involves medical bills. Included in Schedule F (Creditors Holding Unsecured Nonpriority Claims) was the Credit Bureau with a listed address of P.O. Box 2547, Waterloo, Iowa 50704. All creditors, including the Credit Bureau, were served with notice of the commencement of this Chapter 13 bankruptcy. The Credit Bureau does not deny that it received notice of the filing and pendency of this Chapter 13 proceeding.

Debtors filed a Plan which was confirmed on January 8, 1996. Debtors have amended their Plan on several occasions because of their continuing financial problems caused by the diabetes neuritis with which Mr. Tomlinson is afflicted. Because of his illness, Mr. Tomlinson continues to incur medical bills. It is the Credit Bureau's attempt to collect these medical bills which forms the basis for this Motion.

Kathy Fulks testified on behalf of the Credit Bureau. She is their litigation coordinator and has been employed by them for 20 years. She testified that the Credit Bureau receives accounts from various sources for collection. Their collection practice is high volume. Major client's accounts come to the Credit Bureau on tape which is automatically fed into the Credit Bureau's computers. The computer automatically generates a first letter which goes out to the debtor the same night. This letter is a 30 day validation letter purportedly drafted to comply with the Fair Debt Collection Practices Act. Ms. Fulks further testified that the Credit Bureau receives bankruptcy notices almost on a daily basis. The files of these debtors are flagged and all notices of bankruptcy are placed in these files. She testified that any new accounts received by mail, after a bankruptcy is filed, are also placed in this file and marked accordingly.

The Credit Bureau has identified a programming problem in their computer program. Ms. Fulks categorized this as a "glitch" in the system which needs to be addressed. The accounts which come in on tape create new files with no reference in that file that collection proceedings are stayed. When these accounts arrive, the 30 day letter is automatically generated and the file is handed to a collector before it is checked into the system. The collector makes a

telephone call as soon as possible, usually the next morning. This process, therefore, insures that, even if the automatic stay is in effect, the computer will generate a letter and contact will be made by a Credit Bureau employee.

Mr. Tomlinson testified that some medical debts were discharged in the Chapter 7 bankruptcy. Additional medical bills were listed in the Schedule F in the current Chapter 13 filing, and still more medical bills have been incurred since the filing of the Chapter 13. Contact by the Credit Bureau with Debtors began in the spring of 1997. Different Credit Bureau employees were involved but Mr. Tomlinson remembers one of the individuals was named Rosa. He testified that he informed the Credit Bureau on numerous occasions that Debtors were in Chapter 13 and gave them the name of Debtors' attorney.

During May 1997, the Credit Bureau mailed a four page computer printout to Debtors. It is dated May 5, 1997 and contains accounts which had been turned over to the Credit Bureau for collection. Most, if not all, of these accounts involved medical bills with dates of service ranging from 1991 to the middle of 1996. Ms. Fulks testified and identified this printout (Debtors' Exhibit 3) as the credit file generated by the Credit Bureau's reporting department. She testified that this is kept by the Credit Bureau. Ms. Fulks provided no explanation why this document was sent to Debtors, or what purpose it would serve other than to encourage Debtors to pay the stated accounts.

After numerous contacts, the Credit Bureau filed a petition in Small Claims Court in Black Hawk County, Iowa, on July 29, 1997. Two medical bills were included in this action. The first was from Allen Memorial Hospital in the amount of $335.63 for services rendered in June and August of 1996. These bills were incurred after the filing of the Chapter 13 petition. The second bill was from Midwest Anesthesia in the amount of $64.26 for services provided on June 23, 1995. This bill was incurred prior to the filing of the Chapter 13 petition.

Debtors filed a denial in Small Claims Court and were informed that they had to attend a mediation session before trial. This was scheduled for September 10, 1997. The parties' versions of what transpired at this meeting differ somewhat. Mr. Tomlinson testified that the documents which he received required that he go to the mediation session or a judgment would be entered against him. He stated that he took the Credit Bureau printout with him to the mediation session. He testified that he was told that the highlighted items on the report, consisting of approximately 40 different medical bills, were items that Debtors still owed and for which payment had not been made nor were they written off in any bankruptcy proceeding.

Ms. Fulks denied that she discussed this document with Debtors at the mediation session. Debtor testified that when he got to the mediation session, he informed the mediator that he was in bankruptcy. He testified that the mediator asked Ms. Fulks if she wished a continuance. Ms. Fulks declined and said that if she did not get satisfaction on this date, she would go for a judgment and garnish Debtors. Mr. Tomlinson testified that he felt that he had no choice. This was an obligation which he had incurred and, therefore, he agreed to the mediation and signed a mediation consent form in which he agreed to pay $50 per month.

This consent form was reduced to judgment by a judgment entry order of October 3, 1997 in which judgment was entered in the amount of $402.02 plus 10% interest and Court costs of $47.60. The order further stated that, in conformance with the mediation consent, the judgment would be paid at the rate of $50 per month beginning October 10, 1997. Mr. Tomlinson testified that he did not contact Mr. Parrish before the mediation or after judgment because he did not think there was any way out of it and there was no point in contacting Mr. Parrish about this.

Ms. Fulks, however, testified that Mr. Tomlinson did not say that there was a Chapter 13 pending. She testified that, if she had been told of the pendency of a Chapter 13, she would have sought a continuance and talked to her attorney. Ms. Fulks was asked on cross-examination if she told Mr. Tomlinson that she would take a judgment and garnish if this matter could not be resolved. She testified that it was possible that she said this. She was also asked whether the discussion concerning garnishment was before the entry of judgment or after to which she testified that it was not before but it was possible that she discussed garnishment after the entry of judgment. Mr. Tomlinson testified that Debtors made either one and a half or two payments toward this judgment beginning in December of 1997. The Credit Bureau records reflect that one payment was made in the amount of $50.

A Court hearing was scheduled in the Chapter 13 case on an unrelated matter on January 28, 1998. While discussing those matters with their attorney, they also informed Mr. Parrish of the prior events for the first time. Mr. Parrish

notified the Credit Bureau by a letter dated January 22, 1998 that the Chapter 13 bankruptcy was pending. He requested that all funds associated with the Small Claims action be refunded to Debtors. He asked that all calls and contacts by the Credit Bureau with Debtors cease and that any inquiries be directed to his office. Mr. Parrish's correspondence was directed to Mr. Nelson, attorney for the Credit Bureau. Mr. Nelson replied with a letter dated February 10, 1998 (Debtors' Exhibit 4). In this letter, among other matters, Mr. Nelson suggests that Mr. Tomlinson contracted for a new debt when he signed the mediation agreement on September 10, 1997 agreeing to pay the amount of $402.02 at the rate of $50 per month.

Based on the foregoing events, Debtors filed a Motion to Hold Creditor in Civil Contempt and Liable for Damages on February 20, 1998. A copy was mailed to the Credit Bureau. The Credit Bureau does not contest that they received adequate notice of this Motion. Despite the pendency of this Motion, the Credit Bureau continued to contact Debtors both by mail and telephone. Mr. Tomlinson testified that he received a telephone call March 3, 1998 from the Credit Bureau by a person named Rosa or Roseanna. Ms. Fulks testified that Rosa, who no longer works for the Credit Bureau, could have called the Tomlinson's on that date. Debtors received the final telephone call on March 27, 1998 from a person identified as Kim Detmer. She identified herself as an employee of the Credit Bureau. This last telephone call was five days prior to the date set for hearing on this Motion. Mr. Tomlinson testified that the content of these contacts involved the Credit Bureaus concern that Debtors had not made payments and that if the payments were not brought current, the Credit Bureau would seek legal remedies. Ms. Fulks testified that Kim Detmer is a new employee hired within the last 30 days. She does not do phone solicitations though she is in the same department as Ms. Fulks. She testified that Ms. Detmer does not deal with the public directly though she knew of no reason why Debtor would know her name unless such a contact was made.

Ms. Fulks did not directly acknowledge that any contacts were made after the correspondence between Mr. Parrish and Mr. Nelson. She opined that another individual in her office could have instructed Ms. Detmer to place telephone calls but she did not think this was possible because it would have had to come through Ms. Fulks. Even though no contacts were directly acknowledged, Ms. Fulks provided an explanation concerning the glitch in the computer system and how it automatically generates a letter and a telephone contact at the earliest possible time. She testified that she understands that this is a problem and that it could create what she categorized as a "technical violation" of the automatic stay. She testified that they are in the process of correcting this problem. No further explanation was provided as to how or when this would be completed. The Court asked Ms. Fulks whether a new bill coming into their office from one of the creditors at this time would generate a letter and a telephone call to Debtors despite the foregoing events. She replied that it would.

Ms. Fulks additionally testified that she was not aware that post-petition debts in a Chapter 13 were stayed from collection. She did not contact her attorney prior to the mediation session in September of 1997. She had discussions with her attorney, Mr. Nelson, subsequent to that time in which he suggested that after the Chapter 13 bankruptcy was completed, the debt may be subject to collection. The comments in the February 10, 1998 letter were explained as being legal discussions setting out only potential strategies concerning new debt. Ms. Fulks testified that she was not directly told that she could collect post-filing debt in a Chapter 13 case.

CONCLUSIONS OF LAW

A petition filed under §301 of the Code imposes the automatic stay under §362. All voluntary cases, including those under Chapter 13, are included in §301. The automatic stay, under §362, prohibits any entity from taking action "to collect, assess, or recover a claim against the debtor that arose before the commencement of a case." 11 U.S.C. §362(a)(6). The scope of the automatic stay is extremely broad. In re Knaus, 889 F.2d 773, 774 (8th Cir. 1989). By the passage of §362, Congress intended the automatic stay to stop "all collection efforts, all harassment, and all foreclosure actions" and "prevent creditors from attempting in any way to collect a prepetition debt." H.R. 595, 95th Cong., 1st Sess. §340-42 (1977); In re Grau, 172 B.R. 686, 690 (Bankr. S.D. Fla. 1994).

The breadth of the automatic stay as it applies to Chapter 13 is set forth in 11 U.S.C. §362(c) which states:

> (c) Except as provided in subsections (d), (e), and (f) of this section -

> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and
>
> (2) the stay of any other act under subsection (a) of this section continues until the earliest of -
>
> (A) the time the case is closed;
>
> (B) the time the case is dismissed; or
>
> (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

As to a Chapter 13 debtor, therefore, the automatic stay remains in effect from the time of filing of the petition until the case terminates under one of the alternatives defined in §362(c). Taken together, the provisions of the automatic stay are intended to provide continuous protection to a debtor, not only during the plan formulation and confirmation process, but through the period during which plan payments are made. This is intentionally done to prevent creditors from disrupting the income stream during the implementation of the plan. The stay is sufficiently broad to include not only prepetition creditors but also postpetition creditors who may adversely affect the income stream unless stayed.

Section 362(h) addresses sanctions for violations of the automatic stay. It provides that:

> 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.

A violation of the stay is "willful" where the violator's conduct is deliberate and done with knowledge of the bankruptcy filing. In re Dencklau, 158 B.R. 796, 800 (Bankr. N.D. Iowa 1993); In re Knaus, 889 F.2d 773, 775 (8th Cir. 1989).

One court has designed a test to evaluate whether creditor action constitutes a violation of §362(a)(6). In re Briggs, 143 B.R. 438, 453 (Bankr. E.D. Mich. 1992) (considering the issue in the context of the reaffirmation process). This test holds that creditor conduct violates §362(a)(6)

> only if the action (1) could reasonably be expected to have a significant impact on the debtor's determination as to whether to repay, and (2) is contrary to what a reasonable person would consider to be fair under the circumstances.

While this test may not include all factors which may be considered to determine whether a violation of the stay occurred, it provides an appropriate benchmark of unacceptable conduct.

Actual damages may be awarded under §362(h) when the moving party establishes a violation of the automatic stay. The Eighth Circuit has stated that: "The trial court has discretion to fashion the punishment to fit the circumstances." Hubbard v. Fleet Mortg. Co., 810 F.2d 778, 782 (8th Cir. 1987) (citing United States v. United Mine Workers, 330 U.S. 258, 303 (1947). Upon a finding of a violation of §362, courts may award actual damages. Arnold, 206 B.R. 560, 567 (Bankr. N.D. Ala. 1997).

Costs and attorney's fees may also be awarded under §362(h). The Eighth Circuit has ruled, however, that costs and attorney's fees are "allowable only to embellish actual damages" and if there is insufficient evidence in the record to support an award of actual damages, there can be no award of costs or attorney's fees. Lovett v. Honeywell, Inc., 930 F.2d 625, 629 (8th Cir. 1991).

In addition to actual damages, §362(h) authorizes punitive damages in appropriate circumstances. The Eighth Circuit has stated: "We emphasize 'appropriate circumstances' are also required. The cases interpreting 'appropriate circumstances' indicate to us that egregious, intentional misconduct on the violator's part is necessary to support a punitive damages award." United States v. Ketelson, 880 F.2d 990, 993 (8th Cir. 1989); Lovett, 930 F.2d at 628; Knaus, 889 F.2d at 775. Other courts have similarly awarded punitive damages when the conduct is willful and in clear

disregard and disrespect to the bankruptcy laws. In re Miller, 89 B.R. 942, 944 (Bankr. M.D. Fla. 1988).

CREDIBILITY OF WITNESSES

Rule 52(a) of the Federal Rules of Civil Procedure provides that:

> Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to

In weighing the credibility of a witness, the Court must examine the evidence presented and evaluate the testimony of the witness including variations in demeanor as well as changes in the tone of voice. Anderson v. City of Bessemer, 470 U.S. 564, 575 (1985). The Court can assess credibility based upon the content of the testimony as well as the Court's own experience with the way people act. In re Carrigan, 109 B.R. 167, 170 (Bankr. W.D.N.C. 1989). Where two permissible views of the evidence exist, it is the responsibility of the Court to weigh the evidence presented including the credibility of the witnesses and make a choice between them. In re Waugh, 95 F.3d 706, 712 (8th Cir. 1996).

ANALYSIS

The Credit Bureau does not deny that it received official, formal notice of the pendency of the Chapter 13 bankruptcy proceeding. The Credit Bureau also does not deny that it received adequate notice of the pendency of Debtors' present Motion filed February 20, 1998. The Court concludes that the Credit Bureau has received adequate notice of all proceedings which form the basis of this Motion to Impose Sanctions. The Credit Bureau is bound by the automatic stay provisions of §362 unless a legally cognizable reason is presented which excuses compliance. The Court will review the conduct of the Credit Bureau by examining each grouping of events separately.

The first series of contacts occurred between the Credit Bureau and Debtors in the spring of 1997. Mr. Tomlinson testified that individuals from the Credit Bureau made these contacts. The stated purpose of the contacts was to collect medical bills. Mr. Tomlinson testified that he informed the Credit Bureau on numerous occasions that he was in Chapter 13 and directed that they contact Debtors' attorney, Mr. Wallace Parrish. If true, these contacts, individually and collectively, violate the automatic stay provisions of §362(a)(6). The Court has reviewed the record and been unable to locate any denial by the Credit Bureau that these contacts occurred. The Credit Bureau, by way of defense, asserts that their computer program has a "glitch" which opens a new file each time a computer taped series of bills are fed into the Credit Bureau's computers. The new file does not recognize the flags put into existing files. A letter is generated and an initial contact is made before the new file is checked into the system. This is the only defense provided by the Credit Bureau to these contacts. For the reasons set out hereafter, the defense must fail.

The explanation that contacts were inadvertently made because of a computer error is not explained to this Court's satisfaction. While it is possible that a computer-to-computer program could have an error which would generate a letter spontaneously, it does not explain why the letters could not be manually cross referenced by the Credit Bureau for bankruptcy stays before mailing. There is no evidence that these letters are generated and placed with the postal service without contact by any employee of the Credit Bureau.

Second, the telephone contact made the next day involves human contact by an employee of the Credit Bureau. No satisfactory explanation is provided why it is necessary to make the telephone contact on such an expedited basis that a cross check through the computer or manually could not be made to check for bankruptcy filings.

Third, the computer "glitch" purportedly only deals with new accounts sent computer-to-computer. While certain limited contacts may have occurred because of this purported "glitch", many of the contacts made on the basis of the record presented do not qualify as this type of contact. Many of the contacts made in the spring of 1997 were attempts to collect medical bills, some of which were incurred prior to the filing of the Chapter 13 petition. When the small claims petition was filed in Black Hawk County, Iowa on July 29, 1997, it was revealed that one of the bills involved was incurred on June 23, 1995, almost five months prior to the filing of the Chapter 13 petition. This was a bill which was listed in the Chapter 13 schedules and for which the Credit Bureau had prior knowledge.

Fourth, even if the Court were to accept that this computer programming error was the sole cause of these numerous contacts, this does not constitute a viable defense to a violation of §362. An alleged shortage of personnel power,

impracticality, or lack of appropriate procedures to determine the bankruptcy status of a debtor do not justify violation of the automatic stay. In re Conti, 50 B.R. 142, 146 (Bankr. E.D. Va. 1985). The burden is upon the creditor to establish procedures which are adequate to eliminate violations of the automatic stay. Prevention of such violations are exclusively within the creditor's control and failure to provide adequate safeguards to prevent violations of the automatic stay renders a creditor culpable for such violation. In re Roush, 88 B.R. 163, 164 (Bankr. S.D. Ohio 1988). The Credit Bureau's representations that a computer "glitch" is responsible for this conduct is legally inadequate because it does not establish to this Court's satisfaction that the conduct could not have been avoided through proper diligence.

This Court concludes that the series of contacts which took place from the spring of 1997 up to the filing of the small claims lawsuit in July of 1997 are not defensible by placing blame upon the computer.

Finally, even if the computer has a programming problem, credible evidence supports the finding that the Credit Bureau had direct knowledge that it was violating the automatic stay. Mr. Tomlinson testified that on numerous occasions he advised the respective callers that he was in Chapter 13 bankruptcy and he directed them to contact his attorney Mr. Parrish. There is no evidence in this record to rebut this testimony. There is a complete absence of any indication that the Credit Bureau utilized internal monitoring procedures in dealing with the Tomlinson's statements to the Credit Bureau. The Court has weighed the credibility of the witnesses and considered all the surrounding circumstances. The court concludes that Mr. Tomlinson did on numerous occasions during this period of time advise the Credit Bureau that he was in bankruptcy and should not be contacted. He would have absolutely no reason not to do so. The Court further finds that Debtors advised the Credit Bureau to contact their attorney, Mr. Parrish. Based on the record as a whole, the series of contacts beginning in the spring of 1997 up to the filing of the small claims petition on July 29, 1997 individually and collectively constitute violations of the automatic stay.

A specific contact by the Credit Bureau occurring during this time period is worthy of individual mention. Debtors received a computer printout consisting of four pages of material from the Credit Bureau in May of 1997. This is acknowledged by the Credit Bureau to be a document generated by their reporting department. It lists medical bills from 1991 up to dates of services occurring well after the filing of the Chapter 13 petition. It contains medical bills which were not only listed in the present Chapter 13 petition but some which were listed and discharged in the 1993 Chapter 7 bankruptcy proceeding as well as medical bills which were incurred post-petition by Debtors and subject to the Chapter 13 stay provisions of §362.

No explanation of any kind is provided by the Credit Bureau why this report was sent to Debtors. Mr. Tomlinson testified that he took this report with him when he appeared in small claims court in Black Hawk County in September 1997. He was advised that the highlighted items on the report, consisting of approximately 40 different medical bills, were items that Debtors still owed and for which payment had not been made nor written off in any bankruptcy proceeding. The representative of the Credit Bureau denies that she discussed this document with Debtor at mediation but offered no other explanation. The Court has weighed the credibility of the witnesses and concludes that Debtor's recollection of the events involving this document are accurate and believable. Even if the Court were to conclude otherwise, which it does not, it is the transmittal of the document which is the issue and not whether it was discussed. Transmittal of the document is not contested. It is obvious that the transmittal of this document from the Credit Bureau to Debtors was an attempt to collect obligations stayed by §362. Transmittal of this document to Debtors constitutes a violation of the automatic stay provisions of §362(a)(6).[(1)]

The next event is the filing of a small claims action in Black Hawk County, Iowa on July 29, 1997. This was brought directly in the name of the Credit Bureau as a party plaintiff and not under the names of the medical providers. Mr. Tomlinson testified that he advised Ms. Fulks from the Credit Bureau that he was in Chapter 13. Ms. Fulks denies that she was advised of the pendency of the Chapter 13 proceeding and testified that if she had been provided this information, she would have sought a continuance and talked to her attorney. The Credit Bureau argues that Mr. Tomlinson did not contact his attorney before the mediation or after the judgment was entered. A creditor is obligated to follow the mandates of the automatic stay. It is not the prerogative of a creditor to set conditions on whether the automatic stay will be honored. As stated in this context:

> an offending creditor cannot dictate the method debtors must use to pursue rights granted by law, especially when the creditor's stated position permits it to continue to violate the discharge injunction and enforce

> debtors, sometimes at their own expense, to take affirmative action to stop the violations. The equities simply are not on the creditor's side in that argument.

Roush, 88 B.R. at 164.

The Court has had an opportunity to weigh the evidence and determine the credibility of witnesses. It is the conclusion of this Court that Mr. Tomlinson did notify Ms. Fulks of the pendency of the Chapter 13 proceeding and that she chose to proceed in spite of this information.(2) Even if Mr. Tomlinson had not advised Ms. Fulks of the pendency of the Chapter 13, the failure to do so would not negate a violation of the automatic stay. While these findings have relevance on the issue of damages, they are unnecessary to a finding of a violation of §362(a)(6) because the Credit Bureau at trial acknowledged that the filing of the small claims action violated the automatic stay.

This Court finds that the Credit Bureau violated the automatic stay provisions of §362(a)(6) by filing the small claims action and pursuing it not only to a judgment but by collecting payments after the judgment was entered. This entire series of events violates the automatic stay provisions of §362.

The final series of events took place after the entry of judgment. Mr. Tomlinson testified that in January, 1998, he notified Mr. Parrish of the judgment. This precipitated a letter by Mr. Parrish to counsel for the Credit Bureau. It is beyond dispute that at that time, the Credit Bureau was notified of the pendency of the Chapter 13, that it was in violation of the automatic stay and that all contact was to be terminated between the Credit Bureau and Debtors. Incredibly, however, the contacts continued unabated almost up to the time of the hearing on this Motion. Two specifically identifiable contacts occurred; one on March 3, 1998 and the other on March 27, 1998. Mr. Tomlinson testified that these contacts involved the Credit Bureau's concern that Debtors had not been making payments on the small claims judgment. No specific denial is entered by the Credit Bureau concerning these contacts.

The testimony is not clear but it appears that the Credit Bureau is taking the position that the computer programming problem explains these contacts. The Court's previous comments concerning this defense are equally applicable here. It is ultimately the responsibility of the creditor to ensure compliance with the automatic stay and any flaws in a computer program are not a defense to a violation of the automatic stay. Secondly, the nature of the contacts made reflect that they were made to collect the small claims judgment. These were not contacts made because of a new account and generated by the alleged computer program problem. These were based on a decision made by an employee of the Credit Bureau to initiate contact to generate collection of this judgment. No relationship between this activity and a computer program problem is established in this record.

Finally, these contacts came after a long series of events, each of which independently notified the Credit Bureau that these Debtors were under the protection of the bankruptcy court. The Credit Bureau received a copy of the Chapter 13 filing; the individuals who called Debtors in the spring of 1997 were informed by Mr. Tomlinson of the pendency of the bankruptcy proceeding; Ms. Fulks, at the time of the mediation session, was informed of the pendency of the Chapter 13 proceeding; Debtors' attorney, Mr. Parrish, notified not only the Credit Bureau but the Credit Bureau's attorney of the pendency of the Chapter 13 proceedings; the Credit Bureau received notice of the motion seeking damages for violating the automatic stay; Debtors informed the individuals calling in March of 1998 of the pendency of the Chapter 13 proceedings. It is impossible to accept that after these numerous notices, the Credit Bureau can assert that it was unaware that these Debtors were under the protection of the bankruptcy court.

The ultimate question for this Court's determination is whether the Credit Bureau has willfully violated the automatic stay. Willfulness ultimately means a deliberate or intended violation of the automatic stay. The Credit Bureau, in its testimony, admitted that it may have committed a "technical violation". A technical violation occurs when a violation is unintentional and there is no evidence of any actual damage. Such a violation may be found to not justify damages or a finding of a violation of §362(h). In re Fowler, 16 B.R. 596, 597 (S.D. Ohio 1981). The facts presented here do not fit within that definition. Debtors have established by clear and convincing evidence that the Credit Bureau made numerous contacts of various types over an extended period of time. It did so after having been notified of the pendency of this bankruptcy proceeding through almost every method of notice provided by law. This Court is satisfied that Debtors have established the requisite willfulness standard. It is this Court's finding that the contacts made by the Credit Bureau were deliberate, intentional and specifically designed to ignore the Bankruptcy Code in order to collect these accounts.

This conduct satisfies the requirements of §362(h) and establishes a violation of the automatic stay provisions of §362. Damages are warranted.

DAMAGES

Section 362(h) provides for sanctions against creditors who violate the automatic stay. This section provides that:

> An individual injured by any willful violation of the stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

Courts may award actual damages for emotional distress or mental anguish resulting from a creditor's violation. In re Flynn, 169 B.R. 1007, 1021 (Bankr. S.D. Ga. 1994). Damages may be awarded to compensate debtors for fear, stress, anxiety and humiliation. In re Carrigan, 109 B.R. 167, 170 (Bankr. W.D.N.C. 1989). Punitive damages are appropriate where the violator's actions constitute egregious, intentional misconduct. In re Knaus, 889 F.2d 773, 776 (8th Cir. 1989).

The Credit Bureau asserts that Debtors have not sustained damages as that term is defined in §362(h). Such a conclusion is incorrect. Debtors have sustained actual definable damage. They were hailed into Court on a small claims action and as a direct result of the conduct of the Credit Bureau, a judgment was entered against them. This judgment is in the amount of $402.02 plus any interest that has accrued since July of 1997. Costs were accessed against Debtors in the amount of $47.60. In addition, Debtors have paid a portion of the judgment to the Credit Bureau. Mr. Tomlinson was required to travel from his home to the courthouse to attend the mediation meeting at his own expense. These are compensable elements of damage. It is the conclusion of this Court that an award of $500 is an amount of damages under this category which is supported by the evidence.

In addition to the foregoing damages, a court may award actual damages for emotional distress or mental anguish as well as damages caused by fear, stress, anxiety and humiliation. The Credit Bureau correctly points out that Debtors did not use these terms during their testimony. However, for almost a year, from the Spring of 1997 through March of 1998, these Debtors have endured numerous contacts by the Credit Bureau, all of which was in violation of the automatic stay. They have been contacted in writing and by telephone on an almost continuous basis. They have had a copy of their credit file forwarded to them in the mail by the Credit Bureau. They have been sued in small claims court and forced to undergo mediation. To glibly assert that these Debtors have not undergone fear, stress and anxiety as well as humiliation because of this conduct, ignores the reality of this case. Mr. Tomlinson is a demonstrably ill man. This was known by the Credit Bureau because the bills consist of his numerous medical costs. While this type of damage is not subject to exact calculation, it is a legitimate element of damage which is compensable when warranted. It is precisely this type of case which justifies the imposition of this type of damage. The Court concludes that $750 in damages for this category of damages is reasonable.

In addition to the foregoing damages, §362(h) provides that attorney's fees may be awarded. The Court finds that such fees are warranted in this case. Debtors' attorney, Wallace Parrish, has provided the Court with an affidavit of fees generated by his efforts to enforce the automatic stay on behalf of Debtors. Mr. Parrish has expended 15.92 hours at an hourly rate of $110 for performance of these legal services. He seeks fees in the amount of $1,751.20. The Court has reviewed Attorney Parrish's fee application and finds that the hourly rate is reasonable for attorneys in this community. The Court additionally finds that the number of hours expended on this project were reasonable in order to enforce Debtors' rights under §362 of the Code. These attorney's fees will be awarded in full.

In addition to actual damages and attorney's fees, punitive damages may be awarded under appropriate circumstances. The Eighth Circuit has determined that punitive damages may be awarded when the conduct at issue is egregious and intentional. This Court has reviewed this entire record and set out the specifics in some detail in this opinion. The Credit Bureau was notified numerous times of the existence of this Chapter 13 proceeding. They were notified by formal court process, they were notified by Debtors' counsel, and they were notified by Debtors of the pendency of these proceedings. No other conclusion can be reached but that the Credit Bureau's conduct was intentional. Even after having been formally notified of the pendency of the present Motion seeking sanctions for violation of the automatic stay, the Credit Bureau continued unabated in its desire to collect these bills from Debtors. The last contact was a mere five days prior to the hearing on this Motion for Sanctions. This Court can conceive of very few situations which would establish

a more clear disregard and disrespect to Debtors or the automatic stay provided under the Bankruptcy Code. This case warrants the award of punitive damages.

The award of punitive damages is not susceptible to any precise mathematical calculation. Punitive damages, however, must be reasonable in amount and rational in light of their purpose. In so doing, the U.S. Supreme Court has established guidelines to limit a fact finder's discretion in fixing the amount of punitive damages awarded. These guidelines provide that there must be a reasonable relationship between the award of punitive damages and the harm likely to result from an individual's conduct as well as the harm that has already occurred. Other factors which must be taken into consideration are the character and the degree of the wrong as shown by the evidence in such amount as is necessary to prevent a similar wrong. The Court may also consider the degree of reprehensibility of the individual's conduct, the duration of the conduct, the person's awareness of the inappropriate behavior, any concealment, and the existence and frequency of similar past conduct. In determining the appropriate amount of punitive damages, the trier of fact may consider the profitability of the conduct to the individual involved, the desirability of removing that profit from the individual and having that individual sustain a loss. The Court may also consider the financial position of the individual involved as well as the total costs of litigation.

By way of mitigation, the trier of fact may consider the imposition of criminal sanctions against the individual for that conduct as well as the existence of other civil awards against the individual for the same conduct. An award of punitive damages four times the amount of compensatory damages has been sustained under these guidelines. Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991). Utilizing the same standards established in Haslip, the U.S. Supreme Court approved an award of punitive damages in an amount 526 times the amount of actual damages based on the magnitude of the potential harm that the individual's conduct would have caused if it had succeeded. TXO Prod. Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993). Based on a careful review of the record and applying the standards set forth by the U.S. Supreme Court in Haslip, id., the Court finds that an award of punitive damages of $5,000 strikes a reasonable balance between the punitive damages awarded and the harm caused by the Credit Bureau's conduct.

WHEREFORE, Debtors' Motion for Sanctions against Credit Bureau Enterprises, Inc. is GRANTED.

FURTHER, the Court finds that Debtors have established by clear and convincing evidence that Credit Bureau Enterprises, Inc. willfully violated the automatic stay, §362(a)(6), and is, therefore, subject to sanctions pursuant to §362(h).

FURTHER, the Court finds that Debtors have sustained actual damages in the amount of $1,250.

FURTHER, the Court finds that Debtors have incurred attorney's fees in the amount of $1,751.20.

FURTHER, the Court finds that Debtors should be awarded punitive damages in the amount of $5,000.

FURTHER, judgment is entered in favor of Debtors John Leroy Tomlinson and Lee Ann Tomlinson and against Credit Bureau Enterprises, Inc. in the amount of $8,001.20.

FURTHER, said judgment shall collect interest at the rate of 10% per annum from the date of entry of this judgment.

FURTHER, any Court costs associated with Debtors' pursuit of these sanctions is assessed to Credit Bureau Enterprises, Inc.

SO ORDERED this 5th day of May, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge

1. Numerous of these medical bills were discharged in the 1993 Chapter 7 bankruptcy. Even though not alleged and charged in this Motion for Sanctions, the attempt to collect these discharged obligations presents issues of whether the Credit Bureau also violated the post-discharge injunction in effect under 11 U.S.C. §524(a)(2).

2. The Credit Bureau acknowledges a violation of the automatic stay in this regard. Nevertheless, this finding is relevant to show that the Credit Bureau may have also failed to comply with the Fair Debt Collection Practices Act, 15 USCA § 1692(a) and the Iowa Consumer Credit Code, § 573.7103(5)(e), both of which prohibit contact with a debtor when it is known they are represented by an attorney.