

In the United States Bankruptcy Court

for the Northern District of Iowa

CHARLENE A. SCHRODT
Debtor(s).

Bankruptcy No. 00-00526-D
Chapter 7

ORDER RE SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY AND IN VIOLATION OF THE IOWA CONSUMER CREDIT CODE

On July 6, 2000, the above-captioned matter came on for hearing pursuant to assignment. Debtor Charlene A. Schrodt appeared with her attorney, Francis Henkels. I.S. & Associates did not appear nor anyone for them. The matter before the Court is Debtor's motion to impose sanctions against I.S. & Associates for alleged violations of the automatic stay pursuant to 11 U.S.C. §362(a)(6) and §362 (h) of the Bankruptcy Code, as well as alleged violations of the Iowa Consumer Credit Code. Evidence was presented and the Court took the matter under advisement. This matter is now ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(O).

FINDINGS OF FACT

Debtor filed a Chapter 7 bankruptcy petition on March 10, 2000. A discharge was granted on June 28, 2000; after the occurrence of all facts relevant to the present hearing.

On Monday, March 13, 2000, a message from a Mr. Greg Novak was left on Debtor's answering machine. Mr. Novak identified himself as an employee of I.S. & Associates. The telephone message was preserved on tape and states as follows:

This is "Investigator" Greg Novak from I.S. & Associates. I need you to return my call this afternoon. I will file a case as of 1:30 tomorrow afternoon. It pertains to a complaint regarding a State of Iowa identification which being (sic) 479688070. It is important that you contact me this afternoon. You can reach me directly at area code (630)271-1264.

Debtor testified that she was unaware of any obligation owed to I.S. & Associates and had not listed I.S. & Associates in her schedules. On Monday evening, she returned the phone call to Mr. Novak. He informed her that his call was in regard to a check written to Venture Store in December of 1992 in the amount of \$36. He demanded that a check for \$101 be sent overnight to his company, otherwise charges would be filed. Debtor advised Mr. Novak that she had filed bankruptcy and provided him with Mr. Henkels' name and telephone number. Mr. Novak advised Debtor that even if she filed a bankruptcy, she would still have to go to court on writing a check on a closed account. He further advised her that if he did not receive the check, her name would be entered into a database which would prevent her from writing checks in the future. Debtor testified that the next morning she spoke with Mr. Henkels' legal secretary and advised her of the substance of the previous day's contact with I.S. & Associates.

On March 14, 2000, Debtor again received a message on her answering machine from Mr. Novak. This message states:

Charlene A. Schrodts - This is "Investigator" Greg Novak with IS & Associates. I need to inform you that in accordance with the law that effective (sic) as of this afternoon 3:30 central standard time, your name, state identification, social security number 479-68-8070 is placed permanently into what is called a national negative check protection profile system. This is a national database that will keep you permanently from writing any more checks, opening other checking accounts, maintaining your current account, or destroying (sic) credit in the future. Next step from here is that I am going to have this matter pursued in accordance to and in violation of the law. The law does provide you the right to have an attorney represent you, also does provide you the right to resolve this voluntarily. If you or your attorney have any other questions, I will need to hear from you today immediately at (630) 271-1264.

Upon receiving the message, Debtor again contacted Attorney Henkels' office and was advised that Mr. Henkels was actually on the telephone with Mr. Novak at that time. Mr. Henkels, in an affidavit, states that after he received the message from Debtor on March 14, 2000, he contacted Mr. Novak with I.S. & Associates. He advised Mr. Novak that Debtor had filed bankruptcy and the automatic stay prevents further attempts to collect this debt. Mr. Novak stated that he was not concerned about the automatic stay and that unless he received the money, he was going to file with a check organization ensuring that Debtor would never be able to use a checking account again. Shortly after Mr. Henkels completed this conversation with Mr. Novak, Debtor called and told him that Mr. Novak had left another message on her answering machine.

Mr. Novak had called Debtor and left a third message on her answering machine. This message states:

Charlene A. Schrodts - This is "Investigator" Greg Novak. Unfortunately your attempt to have your attorney contact this office for use as shark repellent has failed. This afternoon at 3:30 central standard time I am going to inform you one last time that you have both conversations on your tape machine- your name, state identification, and social security number and all of your personal information is going to be placed permanently into our national negative check profile system. This is a national database that will keep you from writing any more checks, opening other checking accounts, maintaining your current account and destroying credit in the future. (sic) This information is placed permanently effective at 3:30 central standard time this afternoon. If you have any other questions or if you wish to have an attorney, that is not a "**BANKRUPTCY**" attorney, contact this office for any other questions, my direct line is (630) 271-1264.

Mr. Henkels called Robert Carlson, the Manager for I.S. & Associates. Mr. Henkels' attempts to resolve this matter with Mr. Carlson were unsuccessful. Eventually, Mr. Henkels advised Mr. Carlson that without voluntary compliance by I.S. & Associates, Mr. Henkels had no other choice than to file a motion with this Court. The motion to hold I.S. & Associates in contempt for violation of the automatic stay was filed June 15, 2000. A copy was certified by Mr. Henkels as served upon I.S. & Associates on June 14, 2000 at 6 West Burlington, Westmont, IL 60559.

By Order dated June 21, 2000, this matter was set for hearing on July 6, 2000 at 10:00 a.m. A copy of the order setting hearing was sent to I.S. & Associates at the same address in Westmont, IL. No subsequent pleadings were filed by I.S. & Associates. At the time of trial, no one appeared for I.S. & Associates. Mr. Henkels presented the Court with a letter sent to Mr. Henkels dated June 28, 2000 by

Robert Carlson, the Manager of I.S. & Associates. It is apparent from the letter that I.S. & Associates was aware of this pending matter as well as the claims made by Debtor. It is also clear from the letter that I.S. & Associates did not intend to appear at this hearing.

Debtor testified that she is employed as a social worker with the Visiting Nurse's Association in Dubuque, Iowa. She testified concerning her contact with Mr. Novak. She stated that the messages left on her answering machine were very intimidating and were clearly designed to be so. She testified that Mr. Novak spoke very rapidly and called himself "Investigator". From the speech patterns and the fact that he called himself "Investigator", she concluded that he was some type of law enforcement official.

Debtor testified that she is not clear as to the nature of this debt. In 1992, there was a store located in Dubuque, Iowa known as Venture Store; similar to a Target or K-Mart store. It has been out-of-business for some time. It is possible that she wrote a check which was dishonored. However, she was never contacted by the store nor anyone else about such an occurrence. The first time she was made aware of a possible dishonored check was when Mr. Novak called her.

As a result of these telephone messages and contacts, she became emotionally upset. She was extremely intimidated by this series of phone calls and the fact that even Mr. Henkels' intervention did not seem to be sufficient to cause Mr. Novak to stop the phone calls. In all, she testified that she received four of these phone calls and it was not until the matter was set for hearing on Debtor's motion that the contacts ceased. Debtor testified that as a result of these contacts by I.S. & Associates, she became extremely nervous.

She was required to take time off work to meet with Mr. Henkels. On several occasions, she had to take off two to three hours. Additionally, she was required to take off one day of work in order to attend the hearing on July 6, 2000. She earns \$14 per hour. She testified that she has missed 13 or 14 hours as a result of the conduct of I.S. & Associates. She has lost wages of \$196. She was required to travel to Cedar Rapids for trial on July 6. Round trip from Dubuque to Cedar Rapids is 142 miles. At the government rate of \$.32 per mile, the cost of this trip is approximately \$45. Additionally, Debtor incurred attorney's fees. Mr. Henkels submitted an affidavit of fees and expenses of \$1,447.80. Based upon the affidavit, these fees were incurred as a direct and proximate result of the conduct of I.S. & Associates in contacting Debtor as set out in these findings of fact.

CONCLUSIONS OF LAW

A petition filed under §301 of the Code imposes the automatic stay under §362. All voluntary cases, including those under Chapter 7, 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 enacting §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 7 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 7 debtor, therefore, the automatic stay remains in effect, in most cases, from the time of filing of the petition until the discharge is entered. When all of the relevant facts occurred herein, the automatic stay was in effect.

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 can be considered, it provides a workable benchmark of unacceptable conduct.

Actual damages may be awarded under §362(h) when the moving party establishes a violation of the automatic stay. Section 362(a) confers broad equitable power to remedy adverse effects of automatic stay violations. In re Just Brakes Corporate Sys., 108 F.3d 881, 885 (8th Cir. 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. This 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).

VIOLATION OF STAY

This Court has had an opportunity to weigh the evidence and evaluate the credibility of the witnesses. It is undeniable that I.S. & Associates was aware of the pendency of the Chapter 7 petition filed by Debtor. If not actually provided with Court notice, Debtor personally advised Mr. Novak of the pendency of the bankruptcy on the evening of March 13, 2000. Additionally, Attorney Henkels notified I.S. & Associates through Mr. Novak and Mr. Carlson of the pendency of the Chapter 7 petition on March 14, 2000. This Court concludes that I.S. & Associates was aware of the pendency of the Chapter 7 petition and the fact that the automatic stay was in place at all relevant times.

I.S. & Associates does not deny that it was aware of the imposition of the automatic stay. In fact, I.S. & Associates does not deny any of the allegations. The only "evidence" of I.S. & Associates which the Court has to consider is the letter of June 28, 2000 written by Mr. Carlson, the Manager of I.S. & Associates to Mr. Henkels. Mr. Carlson advises that Mr. Novak's services with the company were terminated and that he regrets what happened to Debtor. However, it is difficult to give weight to this obviously self-serving letter. The Court has had an opportunity to listen to the tapes which were left on Debtor's answering machine. These are messages clearly designed to intimidate. It is obvious from their tone that Mr. Novak intended to give the impression that he was with some type of law enforcement agency investigating criminal conduct. Though he never overtly stated that he was a police officer, the general impression was enhanced by his use of lanague, and the fact that he continually used the term "Investigator" with his name.

Mr. Carlson, the Manager of I.S. & Associates, states in his letter that "I regret what has happened to your client. Please extend my apology to her and to the Judge." However, this sentiment is inconsistent with the evidence. Mr. Henkels testified that he talked to Mr. Carlson on several occasions and Mr. Carlson was not apologetic during any of those conversations. Mr. Carlson was rude, aggressive, and not the least bit sympathetic to Mr. Henkels' advice. He told Mr. Henkels that Mr. Henkels could proceed with any action he felt was necessary and that I.S. & Associates would have any adverse ruling set aside in Illinois. These comments are considerably at odds with those expressed in the letter of June 28.

I.S. & Associates did not file a denial. The evidence presented is sufficient to support the finding that Mr. Greg Novak is an employee of I.S. & Associates and that he was acting within the scope of his duties as a collection agent when he contacted Debtor Charlene Schrodt. Numerous violations of the automatic stay are inherent in his recorded statements. Additional violations of the stay are established by the comments and conduct of Mr. Carlson. In summary, the conduct of I.S. & Associates, through its agents and employees, establishes violations of the automatic stay, 11 U.S.C. §362, which warrant an award of damages.

ACTUAL DAMAGES

Debtor was required to take time off work without pay to consult with her attorney to protect her rights. Because of the conduct of I.S. & Associates, Debtor has sustained lost wages in the amount of \$196. Second, Debtor was required to pay expenses for travel to and from Court in the amount of \$45.

Third, courts may award actual damages for emotional distress or mental anguish resulting from a creditor's violation of the automatic stay as an independent tort. 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). To constitute the independent tort of emotional distress, the conduct must be outrageous and must be done intentionally or recklessly. As a result of the intentional conduct, Debtor must suffer severe emotional distress. In order to constitute this type of emotional distress, the emotional distress must in fact exist, and it must be severe or extreme, but it need not reveal itself physically. The term "emotional distress" includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, and worry. Harsha v. States Savings Bank, 346 N.W.2d 791 (Iowa 1984).

Mr. Novak, as an agent of I.S. & Associates assumed a persona which was specifically and intentionally designed to cause Debtor sufficient distress so that she would comply with his demand that she pay money. Debtor testified as to her intimidation, worry and fright over this series of telephone calls. Under Iowa law, intentional infliction of emotional distress is a tort compensable by damages. The conduct of I.S. & Associates was outrageous and was done intentionally. Debtor suffered severe emotional distress because of the consequences of the conduct of I.S. & Associates. This conduct proximately caused her distress. These are the requisite elements of emotional distress and they have been satisfied here. Debtor is entitled to damages because of this conduct. These types of damages are difficult to ascertain. However, it is the conclusion of this Court that Debtor is entitled to \$3,000 in actual damages as a result of I.S. & Associates' intentional infliction of severe emotional distress upon Debtor.

Fourth, Debtor alleges violations of the Iowa Consumer Credit Code. The Iowa Consumer Credit Code specifically prohibits the following conduct:

1. the false accusation or threat to falsely accuse a person of fraud or any other crime.
2. making false accusations to a person, including a credit reporting agency which states that a debtor is willfully refusing to pay a just debt.
3. the false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or the sale of property or wages of that person.
4. a debt collector shall not use a false representation, or any representation which tends to create a false impression, that a debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or an agency of federal, state or local government.

Iowa Code sec. 537.7103.

Additionally, a debt collector shall not engage in the following:

- e. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls, or discuss the obligation in question within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

Iowa Code sec. 537.7103(5)(e).

The Consumer Credit Code provides that a bill collector violating sec. 537.7103 of the Code is subject to a penalty in an amount determined by the court, but not less than \$100 nor more than \$1,000. Iowa Code sec. 537.5201(1)(y).

I.S. & Associates violated the Iowa Consumer Credit Code in each of previous specifics. In addition, it violated the provisions of the Consumer Credit Code when it continued to communicate with Debtor after having been advised by Attorney Henkels that he represented Debtor. This conduct was intentional and egregious. The Court finds that Debtor is entitled to damages provided by the Consumer Credit Code in the amount of \$1,000.

Fifth, the law recognizes an actionable tort when false or grossly misrepresented reports are made to a credit reporting agency. Dun and Bradstreet, Inc. v. Greenmoss Builders, Inc., 105 S.Ct. 2939 (1985). This tort is in the nature of libel and requires that a party make written or printed statements concerning the debtor. It also requires a finding that the statements were false and made with malice. Finally, the statement must be communicated to someone other than Debtor and, the statements must be intended to injure the reputation of Debtor, expose her to public hatred, contempt or ridicule, or injure Debtor in her efforts to maintain her business affairs. Finally, damages must be shown. In this type of conduct, damages are difficult to prove but general damages are presumed as a result of this type of communication. Damages awardable are those which the law presumes naturally and necessarily result from the communication of these types of statements. Kelly v. Ia. State Educational Assoc., 372 N.W.2d 288 (Iowa Ct. App. 1985).

I.S. & Associates did not file any pleadings in this case. It is impossible to know with certainty whether I.S. & Associates followed through on its threat to file a negative report in an unnamed national negative check profile system. Mr. Novak informed Debtor on several occasions that if she did not comply with his requests, that this action would follow on March 14 at 3:30 p.m. CDT. There is nothing in this record to establish that Mr. Novak, as an employee and agent of I.S. & Associates, did not follow through with this threat. Based on this record, the filing of a negative report is inappropriate. This Court must conclude that Mr. Novak in fact filed a negative report and that it now exists in a national database placed there by I.S. & Associates for improper motives.

The record presented satisfies the requisite elements of the tort of false credit reports. Damages are presumed. Mr. Novak stated to Debtor that his purpose in calling her was to cause her damages. Twice, on March 14, 2000, Mr. Novak, as an agent of I.S. & Associates told Debtor on the telephone that: "We'll keep you from writing any more checks, opening other checking accounts, maintaining your current account, and destroying credit in the future." Damages are difficult to ascertain because the future consequences are difficult to ascertain. Nevertheless, damages are presumed and Debtor is entitled to damages because of this conduct. It is the conclusion of this Court that damages of \$5,000 are appropriate under these circumstances.

The foregoing constitute actual damages sustained by Debtor as a result of the conduct of I.S. & Associates. Because Debtor has sustained actual damages, Debtor is entitled to attorney's fees pursuant to §362(h). Attorney Henkels has submitted to the Court an affidavit indicating attorney's fees expended to date in the amount of \$1,447.80. The Court finds that these fees are reasonable based upon necessary services rendered at a reasonable rate. Debtor will be entitled, in addition to actual damages, attorney's fees incurred because of the conduct of I.S. & Associates in the amount of \$1,447.80.

PUNITIVE DAMAGES

A debtor is entitled to punitive damages if the conduct complained of constitutes egregious intentional misconduct. In re Knaus, 889 F.2d 773, 776 (8th Cir. 1989). I.S. & Associates was notified of the existence of this Chapter 7 proceeding, both by Debtor's counsel and by Debtor. No other conclusion can be reached but that I.S. & Associates' conduct was intentional. Their conduct shows a clear disregard and disrespect to Debtor and to the automatic stay provided by 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. 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. Punitive damages may be awarded 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 and 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 harmed 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 in addition to 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).

To apply the foregoing standards to this case, the Court must examine the total nature of I.S. & Associates' conduct. Their conduct violated the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (a), and the Iowa Consumer Credit Code sec. 573.7103(5)(a). The Court has set out the type of conduct which is prohibited under these Acts. The evidence establishes that I.S. & Associates was aware of its responsibilities after having talked to Mr. Henkels, and intentionally elected to proceed. Despite being advised by Mr. Henkels that he represented Debtor and did not wish them to contact Debtor, I.S. & Associates left a message on Debtor's answering machine which states in relevant part: "If you have any other questions or if you wish to have an attorney, that is not a bankruptcy attorney, contact this office . . . ". Therefore, in addition to violating the automatic stay, I.S. & Associates' conduct violated the Fair Debt Collection Practices Act and the Iowa Consumer Credit Code.

Additionally, the conduct of I.S. & Associates, through Mr. Novak, may well have gone beyond a mere civil violation. Iowa Code sec. 711.4 defines extortion as follows:

A person commits extortion if the person does any of the following with the purpose of obtaining for oneself or another anything of value, tangible or intangible, including labor or services:

...

2. threatens to accuse another of a public defense.

...

4. threatens to harm the business or professional reputation of any person.

Iowa Code sec. 711.4.

Mr. Novak stated: "I will file a case as of 1:30 tomorrow afternoon." When Debtor called Mr. Novak back on the evening of March 13, he again reiterated this by stating that even though Debtor might be in bankruptcy, she would still have to face a judge about writing a check on closed accounts. This was all contingent on her failing to send Mr. Novak a check. When Mr. Novak left a message on Debtor's answering machine on March 14, he stated: "Next step from here is that I am going to have this matter pursued in accordance to and in violation of the law." In the following language of the message, Mr. Novak advised Debtor of her right to have an attorney represent her. The choice of words used bears a resemblance to Miranda warnings and is obviously intended to give the impression that this was something in the nature of a criminal proceeding and that Mr. Novak was in a position to cause criminal consequences.

While the Iowa Criminal Code is not applicable in this context and while the Fair Debt Collection Practices Act and the Iowa Consumer Credit Code are not as such directly involved in a contempt procedure, they are relevant to show how strongly proscribed this conduct is in every area of the law. Mr. Novak was advised on several occasions that his conduct exceeded all bounds of propriety but he elected to proceed despite warnings. This Court concludes, based upon the severity of the conduct involved and on a careful review of the entire record, that the standards set forth by the U.S. Supreme Court in Haslip, Id., have been satisfied and that an award of punitive damages is warranted. Because of the failure of I.S. & Associates to appear, the Court does not have at its disposal factors which may be taken into consideration in mitigation of an award of punitive damages. The Court need not consider such factors as I.S. & Associates voluntarily failed to appear. Therefore, weighing the available record, the Court concludes that, under the circumstances, an award of approximately four times the amount of compensatory damages is appropriate. Punitive damages in the amount of \$35,000 is awarded to Debtor based on the egregious conduct of I.S. & Associates.

SUMMARY

This Court concludes that I.S. & Associates, through its agent Greg Novak, committed outrageous conduct against Debtor in an attempt to collect an eight year old check of nominal value. When advised that its conduct was inappropriate and at a time when the consequences would have been minimal, I.S. & Associates elected to ignore the sound advice of Debtor's attorney and terminate its contact with Debtor. In so doing, I.S. & Associates exhibited a complete disregard for the legal profession, the Fair Debt Collection Practices Act, the Iowa Consumer Credit Code, the Bankruptcy Code, and the judicial system. While the award of damages herein is substantial, I.S. & Associates voluntarily elected to pursue its course of conduct. That conduct, though short in duration, constitutes

numerous and serious violations of the law which may continue to have unknown consequences for Debtor into the future.

WHEREFORE, Debtor's Motion for Sanctions against I.S. & Associates is GRANTED.

FURTHER, the Court finds that Debtor has established by clear and convincing evidence that I.S. & Associates willfully violated the automatic stay, §362(a)(6), and is, therefore, subject to damages pursuant to §362(h).

FURTHER, the Court finds that Debtor has sustained actual damages in the amount of \$9,241.

FURTHER, the Court finds that Debtor has incurred attorney's fees in the amount of \$1,447.80.

FURTHER, the Court finds that Debtor should be awarded punitive damages in the amount of \$35,000.

FURTHER, judgment is entered in favor of Debtor Charlene A. Schrodt and against I.S. & Associates in the total amount of \$45,688.80.

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

FURTHER, any costs associated with Debtor's pursuit of these sanctions is assessed to I.S. & Associates.

SO ORDERED this 20th day of July, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge