

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
IOWA

IN RE:)

) Chapter 7

JONAS W. BANDY)

JULIA M. BANDY)

) Bankruptcy No. 03-00753-D

Debtors.)

**ORDER RE: MOTION FOR SANCTIONS FOR VIOLATION OF § 524(a)
INJUNCTION**

This matter came before the undersigned on May 22, 2003 on Motion for Sanctions filed by Debtors. Debtors were represented by attorney Stuart Hoover. Creditor Homecomings Financial did not appear. After the presentation of evidence and argument, the Court took the matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

FINDINGS OF FACT

Debtors filed their Chapter 7 petition on March 10, 2003. Homecomings Financial is a creditor holding a second mortgage on Debtors' residence. Its claim appears to be undersecured. Between March 20, 2003 and April 22, 2003, Homecomings Financial contacted Debtors, attempting to collect on the debt. The contacts included at least six letters and 21 phone calls.

Discharge has not yet entered in this case. The deadline for filing objections to discharge is June 6, 2003.

Debtors filed their Motion for Sanctions on April 24, 2003. They assert Homecomings violated the 11 U.S.C. § 524(a) discharge injunction. They request the imposition of sanctions against Homecomings, including actual damages, punitive damages, attorney fees and costs.

CONCLUSIONS OF LAW

Section 524(a) states, in pertinent part:

(a) A discharge in a case under this title--

. . .

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.

11 U.S.C. § 524(a).

Section 524(a)(2) replaces the automatic stay of § 362 with a permanent injunction against enforcement of all discharged debts upon entry of the discharge. In re Waswick, 212 B.R. 350, 352 (Bankr. D.N.D. 1997). Unlike § 362(h), which authorizes an individual injured by a willful violation of the automatic stay to recover actual damages, attorney fees, and where appropriate, punitive damages, § 524(a) does not expressly mention such awards. In re Walker, 180 B.R. 834, 847 (Bankr. W.D. La. 1995). Willful violation of the § 524(a)(2) injunction, however, will warrant a finding of civil contempt. Id.; Waswick, 212 B.R. at 352. The burden rests with the movant to show by clear and convincing evidence that the offending creditor had knowledge of the discharge and willfully violated it by pursuing collection activities. Waswick, 212 B.R. at 352.

ANALYSIS

No discharge has yet entered in this case. Therefore, Debtors cannot prove that Homecomings had knowledge of a discharge and willfully violated it. The Court is unwilling to utilize its contempt power to impose sanctions against Homecomings for pre-discharge collection activities. Debtors' Motion requests sanctions based on § 524(a)(2) which concerns only post-discharge actions by creditors. This motion fails to give Homecomings notice of remedies Debtors may wish to seek for any violations of the automatic stay, pre-discharge, under § 362(h).

WHEREFORE, Debtors' Motion for Sanctions for Violation of § 524(a) Injunction is DENIED.

FURTHER, this ruling does not preclude Debtors from re-examining the matter as a violation of the automatic stay under § 362(h).

SO ORDERED this 30th day of May, 2003.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE