

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN  
DISTRICT OF IOWA

IN RE: )

) Chapter 7

ROBERT L. GRAVES )

DIANE GRAVES, ) Bankruptcy No. 02-04233

)

Debtors. )

**ORDER RE MOTION FOR SANCTIONS**

On July 24, 2003, the above-captioned matter came on for hearing pursuant to assignment. Debtors Robert and Diane Graves appeared by Attorney Stuart Hoover. The matter before the Court is Debtors' Motion for Sanctions against Capital One Services, Inc. of Richmond, Virginia for alleged violations of the automatic stay pursuant to 11 U.S.C. § 362(a)(6) and § 362(h). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

**FINDINGS OF FACT**

Debtors filed a Chapter 7 petition on November 27, 2002. Capital One is a creditor holding an unsecured non-priority claim. Capital One contacted Debtors prior to the entry of discharge and attempted to collect on their debt. The contacts included multiple harassing phone calls demanding payment.

Debtors previously filed a Motion for Sanctions alleging a violation of 11 U.S.C. § 524(a). This section imposes an injunction against creditor attempts to collect any personal liability from debtors after the entry of discharge. The Court determined that the contacts existing at the time of the hearing on the § 524(a) motion on May 22, 2003 preceded the entry of the discharge and denied sanctions. However, the Court did not prohibit Debtors from reexamining the matter as a violation of the automatic stay under § 362(h).

Debtors subsequently filed under § 362(h) seeking the imposition of sanctions for violation of the automatic stay. The deadline for filing objections to discharge passed on February 27, 2003.

**CONCLUSIONS OF LAW**

A bankruptcy petition filed under § 301 of the Code imposes the automatic stay pursuant to § 362. All voluntary cases 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).

Section 362(h) addresses sanctions for the violation 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 with knowledge of the bankruptcy filing. In re Dencklau, 158 B.R. 796, 800 (Bankr. N.D. Iowa 1993). In imposing actual damages, 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)).

### **ANALYSIS**

In this case, Capital One has been served on two separate occasions with Debtors' motions for sanctions. At no time have they filed an appearance or made contact with Debtors' counsel. There have been numerous contacts involving letters and telephone calls to Debtors. Debtors have received at least ten telephone calls and at least one letter from this creditor. The contacts have been numerous and have sought payment of debt in violation of the automatic stay.

Capital One has been properly served with notice of the pendency of this bankruptcy case. It has been properly served with the Motion for Sanctions under § 362(a)(6) and § 362(h). The Court determines that there have been a substantial number of contacts by Capital One with Debtors through telephone calls and mailings. The Court finds that Debtors have been damaged and they are entitled a modest sum for actual damages, punitive damages, attorney's fees and costs.

**WHEREFORE**, Debtors' Motion for Sanctions against Capital One is GRANTED.

**FURTHER**, the Court finds that Debtors have established by clear and convincing evidence that Capital One 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 \$500.

**FURTHER**, the Court finds that Debtors have incurred attorney's fees in the amount of \$400.

**FURTHER**, the Court finds that Debtors should be awarded punitive damages in the amount of \$1,500.

**FURTHER**, judgment is entered in favor of Debtors Robert and Diane Graves and against Capital One for these amounts.

**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 are assessed to Capital One.

**SO ORDERED** this 29th day of July, 2003.

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KILBURG  
CHIEF BANKRUPTCY JUDGE

PAUL J.