

THIS OPINION IS NOT INTENDED FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 99-52098	
)		
EDWARD HOVATTER)	CHAPTER 13	
JENNIFER HOVATTER)		
)	JUDGE	MARILYN
)	SHEA-STONUM	
DEBTORS)		
)	ORDER AWARDING DAMAGES	
)	FOR VIOLATION OF THE	
)	AUTOMATIC STAY	

This matter came before the Court on a motion filed by debtors on July 7, 2000 [docket #71] (the "Motion"), requesting that the Court find University Hospitals of Cleveland ("University Hospitals") in contempt for alleged violations of the automatic stay. A hearing on the matter was scheduled for August 10, 2000. University Hospitals did not object or otherwise respond to the Motion.

The August 10, 2000 hearing was held as scheduled. Robert Whittington, counsel for debtors, appeared and the Court heard testimony from debtor-wife, Jennifer Hovatter.

¹ The certificate of service attached to the Motion shows that a copy of the Motion was sent by postage pre-paid regular U.S. mail on July 7, 2000 to the attention of "Counsel" at University Hospitals, 11100 Euclid Avenue, Cleveland, OH 44106. On July 12, 2000 the Bankruptcy Clerk of Clerk's Office sent a notice of the August 10, 2000 hearing on the Motion to University Hospitals at that same address and also at P.O. Box 94564, Cleveland, OH 44191-0594, the address listed for University Hospitals on debtors'

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Neither counsel for nor a representative of University Hospitals was present.¹

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b). Based upon testimony presented at the August 10, 2000 hearing, the argument of debtors' counsel and the documents of record in this case, the Court makes the following findings of fact and conclusions of law.

I. FACTS

On July 14, 1999, debtors filed a joint chapter 13 bankruptcy petition. University Hospitals was listed on debtors' Schedules as holding three unsecured claims for medical services rendered in 1998 and 1999 and debtors' plan provided that unsecured creditors would be paid 2% of allowed claims. On July 18, 2000, the Clerk of Court's Office sent to all creditors and other parties in interest, including University Hospitals, a Notice of Commencement of debtors' bankruptcy case.² *See* docket #5. Debtors' chapter 13 plan was confirmed, without objection, by an Order entered on November 10, 1999. *See* docket #19.

Despite the operation of the automatic stay and the confirmation of debtors' plan,

Schedules and on billing statements sent by University Hospitals to debtors. *See* Exhibits A, C and E as attached to the Motion. *See also* debtors' Petition and Schedules [docket #1]. Neither the Motion nor the notices of hearing sent to University Hospitals by the Clerk of Court's Office was returned as undeliverable.

² The notice was sent to University Hospitals at P.O. Box 94564, Cleveland, OH 44191-0594, the address listed for University Hospitals on debtors' Schedules. *See* debtors' Petition and Schedules [docket #1]. That notice was not been returned to the Clerk of Court's Office as undeliverable.

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University Hospitals sent debtors three pieces of correspondence, dated March 2, 2000, March 30, 2000 and June 1, 2000, regarding payments due for medical services rendered pre-petition. *See* Exhibits A, C and E, as attached to the Motion. (Those three pieces of correspondence will hereinafter be referred to collectively as the "Post-Petition Correspondence"). The documents dated March 2, 2000 and March 30, 2000 were in the form of billing statements which set forth a "balance now due from patient," included various options by which debtors could pay the amount shown as due and also provided that payment should be sent directly to University Hospitals. *See* Exhibits A and C, as attached to the Motion. The document dated June 1, 2000 was in the form of a letter, the text of which, in pertinent part, is as follows:

Several weeks ago, your account was forwarded to the Special Accounts Department of the University Hospitals Health System for resolution. This department has made several attempts to contact you by letter and phone. To this date, we have not had a response to these attempts and your balance remains outstanding.

If you have insurance coverage for this hospital service, please contact our office at the number listed below. If not, please remit payment immediately FAILURE TO RESPOND MAY RESULT IN THE ACCOUNT BEING FORWARDED TO A COLLECTION AGENCY.

See Exhibit E, as attached to the Motion (emphasis in the original).

During the August 10, 2000 hearing, Mrs. Hovatter testified that, soon after receiving the March 2, 2000 billing statement, she called the number listed on the statement to inform University Hospitals that she and her husband had filed a chapter 13 bankruptcy petition and to confirm that the amount listed as due and owing was for

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medical services rendered before their bankruptcy petition was filed.³ Mrs. Hovatter further testified that during the conversation, the University Hospitals account representative confirmed that the charges on the March 2, 2000 billing statement were for pre-petition services, indicated that she need not pay the bill because of the bankruptcy filing, and assured her that the matter would be remedied.⁴ *See* Exhibit A, as attached to the Motion. After receiving the March 30, 2000 and June 1, 2000 correspondence, Mrs. Hovatter testified that she contacted her counsel and not University Hospitals.

In an effort to stop University Hospitals' correspondence with debtors, debtors' counsel sent two letters to University Hospitals (one dated March 14, 2000 and one dated April 7, 2000) indicating that debtors had filed for bankruptcy and requesting that any further contact regarding the matter be made to counsel and not debtors. *See* Exhibits B and D, as attached to the Motion. During the August 10, 2000 hearing, debtors' counsel represented to the Court that no one from University Hospitals ever contacted him in response to those letters.⁵

In the Motion, debtors contend that by sending the Post-Petition Correspondence,

³ The medical services in question are for the Hovatters' minor son who requires ongoing medical treatment for cancer. During the hearing, Mrs. Hovatter testified that since University Hospitals has rendered services to their son on a post-petition basis and because she and her husband understand that those post-petition services are not covered by payments under their chapter 13 plan, she contacted University Hospitals to specifically confirm that the amount shown as due and owing on the March 2, 2000 billing statement (or any part thereof) was not for post-petition services.

⁴ Apart from having a different "Statement Date," the billing statement dated March 30, 2000 appears to be identical to the billing statement dated March 2, 2000. *See* Exhibit C, as attached to the Motion.

⁵ The Court takes favorable notice of the fact that debtors' counsel first attempted to resolve the matter by directly contacting University Hospitals and that debtors did not resort to filing the Motion and thereby involving the Court in the matter until such attempted resolution failed.

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University Hospitals willfully violated the automatic stay. Because of that willful violation, debtors request that University Hospitals be ordered to pay all actual damages, including reasonable attorney fees and costs, incurred in relation to the Motion, as well as any other sanctions "as may be equitable and just." *See* Motion at unnumbered pg. 2. In order to attend the hearing on the Motion, Mrs. Hovatter testified that she had to take approximately three hours of leave from her employment at Cuyahoga Falls General Hospital where she is paid \$12.30 per hour. Pursuant to an affidavit filed by debtors' counsel, debtors have incurred \$442.50 in additional attorney fees and costs for prosecution of the Motion. *See* Affidavit of Robert Whittington [docket #73].

II. DISCUSSION

The automatic stay becomes effective at the moment a debtor's bankruptcy petition is filed. 11 U.S.C. §362(a). Once effective, the automatic stay applies to "all entities" and to "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. §362(a)(6). Unless otherwise ordered by the bankruptcy court, the protection afforded by the automatic stay continues during the entire pendency of a chapter 13 case and terminates only when a discharge is granted or denied.⁶ *See* 11 U.S.C. §362(c) and (d).

By sending debtors the Post-Petition Correspondence, University Hospitals was attempting to collect on a claim against debtors that arose before the commencement of their bankruptcy case. Because these attempts at collection occurred *after* the filing of debtors' bankruptcy petition, University Hospitals clearly violated the automatic stay.

⁶ The Court notes that at no time prior to or during these proceedings did University Hospitals move for relief from the automatic stay pursuant to 11 U.S.C. §362(d).

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Pursuant to §362(h), a person shall recover actual damages, including costs and attorney fees, and, in some circumstances, punitive damages, when that person is injured by a "willful" violation. *See* 11 U.S.C. §362(h). The term "willful," while not defined in the Bankruptcy Code, has been interpreted to simply mean acting intentionally and deliberately while knowing of a pending bankruptcy. *See, e.g., Cuffee v. Atlantic Business & Community Dev. Corp. (In re Atlantic Business & Community Dev. Corp.)*, 901 F.2d 325, 329 (3rd Cir. 1990); *Knaus v. Concordia Lumber Co., Inc. (In re Knaus)*, 889 F.2d 773, 775 (8th Cir. 1989); *In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989); *C.I.T. Financial Services, Inc. v. Posta (In re Posta)*, 866 F.2d 364, 367 (10th Cir. 1989).

As noted above, debtors' petition, which listed University Hospitals as a holder of three claims, was filed on July 14, 1999 and on July 18, 1999, the Clerk of Court's Office sent University Hospitals a Notice of Commencement of debtors' bankruptcy case. Thus, based upon the record evidence, the Court finds that University Hospitals had actual knowledge of debtors' pending bankruptcy by sometime in mid-July, 1999.⁷ Because the Post-Petition Correspondence was sent to debtors well after mid-July, 1999, the Court finds that University Hospitals willfully violated the automatic stay.

Where a willful violation forces debtors to resort to court intervention to enforce

⁷ Assuming arguendo, that University Hospitals somehow did not receive the copy of the Notice of Commencement of debtors' bankruptcy case, it still acted in knowing violation of the automatic stay as it was notified of the pending chapter 13 in mid-March, 2000 when Mrs. Hovatter informed a University Hospitals' account representative that she and her husband had filed for bankruptcy and debtors' attorney sent University Hospitals a letter regarding the same. *See, e.g., In re Withrow*, 93 B.R. 436 (Bankr. W.D. N.C. 1988) (knowledge of bankruptcy filing imputed to Citibank (South Dakota) NA by notice to its apparent agents); *In re Santa Rosa Truck Stop, Inc.*, 74 B.R. 641 (Bankr. N.D. Fla. 1987) (I.R.S. charged with knowledge of bankruptcy filing through communication between debtor's attorney and I.R.S. agent).

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their rights, an award of actual damages, including attorney fees, is appropriate. *See In re Riddick*, 231 B.R. 265, 268 (Bankr. N.D. Ohio 1999), *citing In re Davis*, 74 B.R. 406, 411 (Bankr. N.D. Ohio 1987); *In re Shriver*, 46 B.R. 626, 629-30 (Bankr. N.D. Ohio 1985). In this case, the evidence indicates that Mrs. Hovatter lost \$36.90 in compensation by taking leave from work to attend the August 20, 2000 hearing and incurred additional attorney fees in the amount of \$442.50. A willful violation of the automatic stay may also justify an award of punitive damages. *See* §362(h). A purpose of awarding punitive damages is to deter the party at issue and others similarly situated from undertaking conduct that violates the automatic stay. *Diviney v. NationsBank of Texas (In re Diviney)*, 211 B.R. 951, 969 (Bankr. N.D. Okla. 1997).

It is imperative that large organizations which internally handle collection on accounts receivable develop efficient and reliable procedures to ensure that, once informed of a bankruptcy filing, all collection efforts against a debtor will stop. Otherwise, such organizations will be at risk of continually running afoul of the constraints imposed by 11 U.S.C. §362(a), continually burdening the courts with unnecessary motions to enforce the automatic stay, and continually facing the chance of being sanctioned. *See In re Riddick*, 231 B.R. 265, 268-69 (Bankr. N.D. Ohio 1999).

Based upon evidence before the Court, it appears that University Hospitals may not have any systematic procedures in place to halt collection efforts upon learning of a bankruptcy filing, whether through a notice from the Clerk of Court's Office, a letter from debtors' counsel or a telephone conversation with a debtor. If, by chance, the employees or agents of University Hospitals who received the written and verbal notices of debtors' bankruptcy were acting in violation of some established company procedures to halt collection proceedings upon notice of a bankruptcy filing, University Hospitals chose not

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to appear at the scheduled hearing nor to demonstrate in any manner that it should not be held liable for those parties' actions.

Pursuant to University Hospitals' failure to respond or otherwise defend against the Motion, the entry of default relief and the awarding of compensatory damages as prayed for in the Motion, i.e., the amount of reasonable attorney fees and costs incurred in relation to the Motion, are appropriate. *See* Fed. R. Bankr. P. 7055. Additionally, as a penalty for University Hospitals' apparent failure to develop or to implement effectively procedures to halt collection proceedings upon notice of a bankruptcy filing and in an effort to deter other large organizations from being similarly remiss, the awarding of punitive damages in a sum certain as set forth below is also appropriate. However, the primary purpose of punitive damages is to cause change in the respondent's behavior and the prospect of such change is relevant to the amount in which punitive damages ought to be granted.

III. CONCLUSION

Based upon the foregoing the Court finds that University Hospitals willfully violated the automatic stay imposed by 11 U.S.C. §362(a). Additionally, the Court finds that due to such willful violation, debtors are entitled to recover both compensatory and punitive damages from University Hospitals. **THEREFORE, IT IS HEREBY ORDERED:**

1. That University Hospitals is liable for compensatory damages in a total amount of **\$479.40** (\$36.90 for Mrs. Hovatter's lost compensation and \$442.50 for attorney fees and costs) (the "Compensatory Damages");
2. That the Compensatory Damages are immediately due and payable and shall be remitted forthwith to Robert Whittington by certified check sent

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to: Elk, Elk & Whittington, Key Building, Suite 1023, 159 South Main Street, Akron, Ohio 44308;

3. That, subject to paragraphs 4 and 5 below, debtors are awarded punitive damages against University Hospitals in the sum of \$5,000.00 (the "Punitive Damages");
4. That University Hospitals may purge itself of up to \$4,000.00 of the Punitive Damages by filing with the Court and actually serving on debtors' counsel, by not later than September 29, 2000, a detailed explanation of whether the sending of the Post-Petition Correspondence was consistent with established company procedure. If it was not consistent with established company procedure, University Hospitals' statement must provide a detailed explanation as to what will be done to ensure that its agents and employees abide by such procedures in the future. If the sending of the Post-Petition Correspondence was consistent with company procedure, University Hospitals' statement must provide a detailed explanation as to what actions will be taken to prevent further violations of the automatic stay; and
5. That if the aforementioned statement is timely filed, the Court will hold a pre-hearing conference on its award of Punitive Damages on October 3, 2000, at 3:00 p.m., in Room 250, U.S. Courthouse and Federal Building, Akron, Ohio, at which counsel for debtors and University Hospitals may appear telephonically. If the aforementioned statement is not timely filed, the award of Punitive Damages shall become final and University Hospitals shall be liable for the full amount of that award, including federal judgment

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interest and collection costs and fees, to debtors as of **October 4, 2000.**

MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 9/8/00