

IT IS SO ORDERED.

Dated: 03:46 PM May 21 2009


MARILYN SHEA-STONUM *ESP*
U.S. Bankruptcy Judge

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

IN RE:) CASE NO. 09-50949
)
Deborah L. Guillereault,) CHAPTER 7
)
DEBTOR.) JUDGE MARILYN SHEA-STONUM
)
) ORDER GRANTING DEBTOR'S
) MOTION FOR SANCTIONS FOR
) VIOLATION OF THE
) AUTOMATIC STAY

On May 13, 2009, the Court held a hearing on Deborah Guillereault's ("Debtor") Motion for Sanctions for Tri-Financial's Violation of the Automatic Stay (the "Motion") [docket #9]. Tri-Financial did not respond to the Motion and did not appear at the hearing. The Court allowed the Debtor to testify at the hearing. Based upon the Debtor's testimony, the Motion, and evidence presented at the hearing, the Court rendered an oral decision and **GRANTED** the Motion. This

order is consistent with the Court's oral decision. 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)(G) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). Based upon testimony and evidence presented at the hearing, the arguments of counsel, and the pleadings in this matter, pursuant to Fed. R. Bankr. P. 7052, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Debtor filed her petition for chapter 7 bankruptcy on March 16, 2009.
2. In January 2009, Debtor agreed to a payment arrangement with Tri-Financial. Under the agreement Tri-Financial would withdraw money monthly from Debtor's checking account to repay debts Debtor owed to Cashnet.
3. Debtor contacted Tri-Financial on March 18, 2009 and informed two of its representatives that Debtor had filed for bankruptcy and that she wanted to cancel the payment due to be withdrawn from her checking account on March 31, 2009.
4. Tri-Financial's representatives informed the Debtor that Tri-Financial could not stop the March 31, 2009 withdrawal from Debtor's checking account.
5. Tri-Financial withdrew \$165.85 and \$150.00 from Debtor's checking account.
6. As a result of Tri-Financial's post-petition withdrawal from Debtor's checking account, Debtor incurred \$250.00 in overdraft fees and was forced to open a new checking account.
7. It took Debtor approximately eight hours to set up a new checking account and to handle the resulting fees and issues surrounding Tri-Financial's March 31, 2009 withdrawal from her checking account.
8. Debtor earns, on average, \$25.00 per hour at her job with A. Schulman.
8. Debtor's counsel proffered that Debtor's counsel's law firm had incurred \$600.00 in fees in its attempts to contact Tri-Financial and as a result of filing the Motion.
9. Debtor entered into evidence certified mail receipts which contain signatures

demonstrating that Tri-Financial received service of the Motion twice. Exhibits A, B, C, and D.

10. Tri-Financial did not appear at the hearing nor did it file any response to the Motion.

II. DISCUSSION

Once a bankruptcy case is filed the automatic stay is put in place and no formal service of process is necessary. *Harris v. Mem'l Hosp. (In re Harris)* 374 B.R. 611, 616 (Bankr. N.D. Ohio 2007). The automatic stay, pursuant to 11 U.S.C. 362(a)(6), operates to stay “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.” Debtor testified that Tri-Financial withdrew monies from her account post-petition in order to collect on a pre-petition debt owed by Debtor. The Debtor notified Tri-Financial of the bankruptcy nearly two weeks before the scheduled withdrawal and yet it did not stop the scheduled withdrawal.

Pursuant to 11 U.S.C. 362(k) “an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances may recover punitive damages.” In order to recover actual damages under §362(k) Debtor must establish that there was a willful violation of the automatic stay and that she suffered an injury as a result. *Id.* A violation of the automatic stay is willful “when the creditor knew of the stay and violated the stay by an intentional act.” *Transouth Fin. Corp. v. Sharon (In re Sharon)* 234 B.R. 676, 687 (6th Cir. B.A.P. 1999). In this matter, Tri-Financial willfully violated the automatic stay when it withdrew monies from Debtor’s account after Debtor informed Tri-Financial that she had filed for bankruptcy.

The Court found the Debtor’s testimony credible and it is clear that Debtor suffered

pecuniary injury as a result of Tri-Financial's violation of the automatic stay. Debtor lost a total of \$315.85 due to the withdrawals and she also incurred an additional \$250.00 in costs due to overdraft fees. Debtor had to take eight hours of her time to address the situation created by the withdrawals and the Court determined she incurred lost opportunity costs of \$150.00. Debtor's attorney proffered that counsel's law firm incurred \$600.00 in fees handling this matter. The Court ordered Tri-Financial to return to Debtor the monies it illegally withdrew from her checking account, approximately \$315.85, and the Court ordered Tri-Financial to pay Debtor actual damages of \$400.00 for overdraft fees and lost opportunity costs and \$600.00 in attorney fees.

The Court also determined that punitive damages were appropriate in this matter. Tri-Financial ignored the stay and informed Debtor that it was unable to stop the March 31, 2009 withdrawal. Tri-Financial apparently believes it is exempt from the automatic stay. It is not. It was unreasonable for Tri-Financial representatives to claim that they were unable to stop a withdrawal nearly two weeks before it was scheduled to occur. Punitive damages are awarded to cause future compliance with applicable law. *See In re Riddick*, 231 B.R. 265, 269 (Bankr. N.D. Ohio 1999). Punitive damages are appropriate.

The purpose of allowing punitive damages as a remedy to a violation of the stay is to deter creditors from engaging in such behavior in the future. *Id.* Tri-Financial received notice of Debtor's bankruptcy and did not take the steps necessary to prevent a violation of the automatic stay, nor did it appear in this case to defend itself against the Motion. The Court awarded Debtor a modest \$2000.00 in punitive damages, in order to communicate to Tri-Financial the seriousness of its violation of the automatic stay and to strongly encourage Tri-Financial's compliance with the automatic stay in other bankruptcy cases. If Tri-Financial becomes a repeat violator of the

automatic stay in cases before this Court, the Court will likely not be so modest with respect to the determination of punitive damages in the future.

III. CONCLUSION

Based upon the forgoing and in accordance with this Court's oral decision issued on May 13, 2009, the Debtor's Motion is **HEREBY GRANTED**. Tri-Financial shall return to Debtor all monies it withdrew from Debtor's checking account on March 31, 2009, pay Debtor \$400.00 in actual damages, \$600 in attorney fees, and \$2000.00 in punitive damages.

IT IS SO ORDERED

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cc: (via electronic mail) John Oberholtzer, Counsel for Debtor
Robert Thomas, Chapter 7 Trustee

(via U.S. Mail) Deborah Guillereault, Debtor

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