

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In Re:

JONATHAN M. WEBB,

Debtor.

In Proceedings Under Chapter 11

Case No.: 07-13703

JUDGE RANDOLPH BAXTER

ORDER

Before the Court is Debtor's Motion for Court to Issue Order on Sanctions to be Imposed against Marilyn Polster and Richard D. Eisenberg for Violating the Automatic Stay. Marilyn Polster and Richard D. Eisenberg oppose the Motion. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) with jurisdiction further conferred by 28 U.S.C. § 1334 and General Order No. 84 of this District. After considering the Motion, the Debtor's Certification in Support thereto, the opposition of Polster and Eisenberg, and conducting a hearing, the Court rules as follows:

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On July 19, 2007, this Court entered a Memorandum of Opinion and Order finding Marilyn Polster and Richard Eisenberg in contempt for violating the automatic stay, when, postpetition, they sought to proceed with a foreclosure sale of the Debtor's personal residence. Polster and Eisenberg sought reconsideration of that Order and on September 24, 2007, this Court denied their Motion to Reconsider. On November 8, 2007, this Court held a hearing on its Order to Show Cause why Polster and Eisenberg Should not be Sanctioned and found that sanctions should be imposed. The Court indicated from the bench that sanctions would be imposed. The next day, the matter was appealed. The appeal was dismissed by the Bankruptcy

Appellate Panel on February 4, 2008 for failure to comply with certain procedural rules. The Debtor now seeks an award of attorneys' fees consistent with this Court's July 19, 2007 and November 8, 2007 orders sanctioning Polster and Eisenberg for violating the automatic stay.

The Court first conducted a hearing on Debtor's sanction motion on November 18, 2010. On November 17, 2010, Polster and Eisenberg late-filed a response to the Motion and objected on the basis that an evidentiary hearing was needed. At the November 18 hearing, the Court indicated that it would consider whether an evidentiary hearing was appropriate.

On January 7, 2011, the Debtor filed a Certification of Fees and attached time sheets documenting the time spent on prosecuting the motion for stay violation. There was no response or objection filed with respect to the Certification. The Court then scheduled the matter for re-hearing on January 27, 2011. At that hearing, Polster and Eisenberg renewed their request for an evidentiary hearing.

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The Court has reviewed the Debtor's Certification of fees and finds the amount sought to be reasonable. 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 attorneys' fees." Herein, the Court found that Eisenberg and Polster willfully violated the automatic stay and found sanctions to be appropriate. The Court finds the Certification of Fees to be sufficient proof of Debtor's damages, and, accordingly, an evidentiary hearing is unnecessary. *Silverman v. Mutual Trust Life Insurance Company*, 98 F.3d 926, 929 (6th Cir. 1996)("an evidentiary hearing

is not always mandated before the imposition of sanctions.) *See, e.g. Bailey v. Heckler*, 777 F.2d 1167, 1171 (6th Cir. 1985)(“[w]e emphasize that an evidentiary hearing is not required in every instance of an application for attorney’s fees.”)

Accordingly, Debtor’s Motion for Court to Issue Order on Sanctions to be Imposed against Marilyn Polster and Richard D. Eisenberg for Violating the Automatic Stay is hereby granted and sanctions are imposed against Marilyn Polster and Richard D. Eisenberg in the amount of \$4,405.23. The Opposition of Marilyn Polster and Richard D. Eisenberg is hereby overruled.

IT IS SO ORDERED.

Dated this 4 day of
February, 2011.


JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT