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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 98-12398
)
TANISHA LYNN GANT,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

Debtor Tanisha Lynn Gant filed a Motion Instanter for Enforcement of Stay and Return of Garnished Moneys and for Sanctions against Allied Interstate, Inc. ("Allied"). (Docket 8). The Court held an initial hearing on August 13, 1998 and an evidentiary hearing on August 26, 1998. Allied did not file any opposition to the Motion and did not appear at either hearing.

JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

FACTS

Debtor filed her Chapter 7 case on March 31, 1998 at which time she scheduled Bryant and Stratton ("Bryant"), a college, as an unsecured creditor. Debtor's only connection to Bryant is that she attended classes there for approximately 7 days in 1989. She formally withdrew after Bryant finalized the amount she would have to pay for the course and she concluded that she could not afford it. Bryant never billed her for the tuition or made any effort to collect any

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money from her before the events at issue here. Debtor scheduled Bryant as a creditor to cover the possibility of such a claim.

Debtor is employed by University Hospitals of Cleveland. Her paycheck is deposited directly into her bank account and she receives a deposit confirmation in lieu of a check. On June 20, 1998, Debtor received a deposit confirmation advising her that \$76.10 had been garnished from her pay. She promptly contacted her employer and learned that the garnishment had been initiated by Allied. She immediately called Allied and requested information about why it had garnished her wages. When the Allied representative did not even tell her the name of the creditor on whose behalf it had acted, Debtor asked her attorney, Thomas Aldrich, to intervene.

Mr. Aldrich both wrote to and called Allied to remind it of the bankruptcy filing and to demand return of the funds. In response, an Allied representative stated that it was collecting a claim for Bryant and assured counsel that no further garnishments or collection efforts would be made. Despite that assurance, Debtor's paycheck for the pay period ending July 4, 1998 was again garnished by Allied in the amount of \$86.97. No money has been returned to Debtor.

DISCUSSION

The filing of a bankruptcy petition generally operates as a stay against the commencement or continuation of any action to collect a debt that arose before the filing. 11

U.S.C. § 362(a)(6). A creditor who willfully violates the stay is subject to sanctions:

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.

11 U.S.C. § 362 (h). "To recover damages under § 362(h), the debtor must prove (1) that the violation of the stay was "willful;" and (2) that the individual seeking damages was actually injured by the violation of the stay." *United States v. Mathews (In re Mathews)*, 209 B.R. 218, 220 (B.A.P. 6th Cir. 1997).

A willful violation of the automatic stay is "an intentional or deliberate act done with knowledge that the act is in violation of the stay." *In re Atlantic Business and Community Corp.*, 901 F.2d 325, 328 (3d Cir. 1990). To be willful, a violation does not have to be made with a specific intent to violate the stay. It is enough if the actor had knowledge of the stay and then took intentional acts in violation of it. *In re Bloom*, 875 F.2d 224 (9th Cir. 1989).

In this case, both garnishments took place after the bankruptcy filing, with the second one taking place even after direct communication with Allied both in writing and verbally. Allied presented no evidence to contradict Debtor's position that Allied acted with notice of the bankruptcy filing. As Allied acted deliberately in garnishing Debtor's wages after that notice, Allied willfully violated the automatic stay.

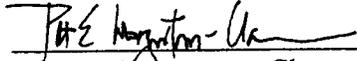
Debtor is entitled to recover damages from Allied only if she has suffered an actual injury. *Archer v. Macomb County Bank*, 853 F.2d 497 (6th Cir. 1988). Debtor showed such an injury through her evidence that her paycheck was garnished twice post-petition and the money has not been returned despite a letter demand and the filing of this Motion. Under the facts of this case, Debtor is entitled to her actual damages in the amount wrongfully garnished by Allied, together with an award of attorneys fees for the legal actions necessitated by Allied's violation of the automatic stay. Mr. Aldrich stated at the hearing, however, that the only sanction he seeks is a return of his client's money.

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CONCLUSION

For the reasons stated, the Motion is granted. A separate Order will be entered in accordance with this decision.

Date: 28 Sept 1998



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Thomas Aldrich, Esq.
Allied Interstate, Inc.

By: Joyce L. Gordon, Secretary

Date: 8/28/98

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In re:) Case No. 98-12398
)
TANISHA LYNN GANT,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED THAT:

1. Debtor's Motion Instanter for Enforcement of Stay and Return of Garnished Monies and for Sanctions against Allied Interstate, Inc. ("Allied") is granted;
2. Allied is directed to pay to Debtor \$163.07 plus interest at the rate of 10% from June 20, 1998 forward. The funds are to be delivered to Debtor's counsel, Thomas Aldrich, on or before September 10, 1998;
3. In the event that the funds are not so delivered, Debtor is given leave to file an application for attorney's fees and a supplemental motion for sanctions. Allied will have ten days after the date on which it is filed in which to respond.

Date: 28 August 1998

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Thomas Aldrich, Esq.
Allied Interstate, Inc.

By: Joyce L. Gordon, Secretary

Date: 8/28/98