

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 05-21525
	)	
BEVERLY SANDERS,	)	Chapter 7
	)	
Debtor.	)	Judge Arthur I. Harris

ORDER

Before the Court is an order (Docket #12) upon the Illuminating Company to appear and show cause why it should not be sanctioned for violating 11 U.S.C. §§ 362 & 366. The Court issued the order to show cause on September 30, 2005, upon the Debtor's motion and affidavit (Docket #5), and held a hearing on the order on January 24, 2006. On February 16, 2006, the Court issued a scheduling order, which set deadlines for the parties to submit additional briefing. The Illuminating Company filed a timely brief (Docket #22), and the Debtor did not reply. For the reasons that follow, the order to show cause is concluded, and no sanctions are imposed.

The following facts are not disputed. According to her affidavit, the Debtor purchased her residence in December 2004. At the time the Debtor took possession, there was no electrical service. The Debtor states that she tried several times to establish service, but the Illuminating Company refused. The Illuminating Company states that it refused service because there was evidence of meter

tampering at the residence. On August 4, 2005, the Debtor filed her Chapter 7 petition and notified the Illuminating Company of her bankruptcy, but the Illuminating Company continued to refuse service. While the Debtor does state that she did not tamper with the meter, the Debtor does not dispute the Illuminating Company's claim that *someone* tampered with the meter.

The Debtor seeks sanctions for the Illuminating Company's alleged violation of 11 U.S.C. §§ 362(a) & 366(a). Subsection 362(a) provides that a petition operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . . , or to recover a claim against the debtor that arose before the commencement of the case . . . ;
- (2) the enforcement, against the debtor or property of the estate, of a judgment obtained before the commencement of the case . . . ;
- (3) any act to obtain possession of the property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien . . . ;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case . . . ;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case . . . against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court . . . .

In this case, the Debtor has not alleged any facts that the Illuminating

Company violated the automatic stay. The Debtor only recites the fact that the Illuminating Company continued to refuse service “despite notice of the Debtor’s bankruptcy filing.” The Debtor has not shown how continued refusal of service, which has never been provided to the Debtor prepetition, violates any of the provisions of 11 U.S.C. § 362(a). Thus, the Court finds that the Illuminating Company did not violate the automatic stay.

The Debtor also seeks sanctions for violation of 11 U.S.C. § 366(a), which provides in pertinent part:

. . . [A] utility may not . . . alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under [Title 11] . . . .

Here, the Illuminating Company had been consistently refusing service to the Debtor’s residence for eight months prior to the commencement of the case. It is therefore impossible that this refusal was based on the commencement of the bankruptcy case. Moreover, because Debtor never had electrical service at her residence, the Illuminating Company’s refusal cannot be based on unpaid prior service. Section 366 prevents utilities from altering, refusing, or discontinuing service *solely* on the basis of the commencement of a bankruptcy case, but

a utility company has the lawful authority to refuse service ‘to any debtor for any reason which would validly constitute a ground for refusal if that debtor were not in bankruptcy, with the single exception of non-payment for past services.’

*Memphis Light, Gas & Water Div. v. Farley*, 135 B.R. 292, 294 (W.D. Tenn. 1991) (quoting *In re Webb*, 38 B.R. 541 (E.D. Pa. 1984)); see also *In re Morris*, 66 B.R. 28 (E.D. Mich. 1986) (evidence of tampering valid grounds to discontinue service). Since the Illuminating Company refused service to the Debtor because of meter tampering, the Illuminating Company's refusal to provide service did not violate section 366. Accordingly, no sanctions are imposed, and the order to show cause is concluded.

IT IS SO ORDERED.

/s/ Arthur I. Harris      3/23/06  
Arthur I. Harris  
United States Bankruptcy Judge