

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 06-11033
)	
MATTHEW MARKSBURY and)	Chapter 13
JENNIFER MARKSBURY,)	
)	Judge Pat E. Morgenstern-Clarren
Debtors.)	
)	<u>MEMORANDUM OF OPINION</u>
)	<u>AWARDING DAMAGES IN FAVOR</u>
)	<u>OF THE DEBTOR AND AGAINST</u>
)	<u>JOE PRENTIGRAS FOR VIOLATION</u>
)	<u>OF THE AUTOMATIC STAY</u>

The debtor Matthew Marksbury filed a “Motion to Hold Person in Contempt” in which he alleged that Joe Prentigras, the proprietor of Joe’s Muffler Shop, refused to return the debtor’s 1997 Ford F-150 pickup truck.¹ Mr. Prentigras did not file a response to the motion and did not appear at the hearing. The court treated the motion as a motion for an order on Joe Prentigras to show cause as to why he should not be held in contempt or sanctioned for violating the automatic stay provisions of 11 U.S.C. § 362, granted it, and ordered Mr. Prentigras to appear and show cause.²

Mr. Prentigras again failed to appear. Based on evidence proffered by the debtor’s counsel, the court found that Mr. Prentigras was in willful violation of bankruptcy code § 362, and that the debtor was entitled to an award of actual damages under § 362(k)(1).³ The court set

¹ Docket 15.

² Docket 21.

³ Docket 36.

an evidentiary hearing on damages for July 11, 2006. The court also offered Mr. Prentigras the alternative of promptly returning the truck.

Mr. Prentigras did not return the truck and did not appear at the July 11, 2006 hearing. The debtor's counsel proffered evidence at the hearing that the value of the truck in its current condition is \$9,075.00.⁴ The court finds this to be competent evidence of the value and awards this amount as part of the debtor's actual damages.

The debtor also asks for an award of attorney fees in the amount of \$1,129.50, which he supported with an itemized statement of the services rendered in relation to this issue.⁵ An individual who has been injured by a willful violation is entitled to recover attorney fees as part of an award of actual damages. The court finds that the award requested for attorney fees is fair and reasonable and that the debtor is, therefore, entitled to an additional award of \$1,129.50.

The court will enter a separate order reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by the clerk's office by regular mail on:

Joe Prentigras, Joe's Muffler Shop, 604 South Main Street, Huron, OH 44839

⁴ Docket 40.

⁵ Docket 40.

THIS OPINION NOT INTENDED FOR PUBLICATION

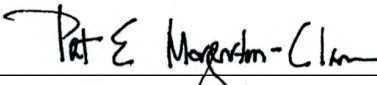
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 06-11033
)
MATTHEW MARKSBURY and) Chapter 13
JENNIFER MARKSBURY,)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**
)

For the reasons stated in the memorandum of opinion filed this same date, this court having previously found that Joe Prentigras violated 11 U.S.C. § 362, judgment is now entered in favor of the debtor Matthew Marksbury and against Joe Prentigras in the amount of \$ 11,334.00. (Docket 36).

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by the clerk's office by regular mail on:
Joe Prentigras, Joe's Muffler Shop, 604 South Main Street, Huron, OH 44839