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U.S. BANKRUPTCY
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NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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RANDALL J. HAKE and	*	
MARY ANN HAKE,	*	CASE NUMBER 04-41352
	*	
Debtors.	*	Chapter 7
	*	
	*	HONORABLE KAY WOODS
	*	

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ORDER DENYING BUCKEYE'S MOTION FOR APPROVAL OF SUPERSEDEAS OR CASH BOND AND STAY PENDING APPEAL

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On May 31, 2007, this Court entered an Order (Doc. # 708) ("May 31 Order") based upon its Memorandum Opinion entered that same date (Doc. # 707), which found that Buckeye Retirement Co., L.L.C., Ltd. ("Buckeye") had willfully violated the automatic stay in 11 U.S.C. § 362 and awarded Debtors Randall J. Hake and Mary Ann Hake ("Debtors") actual damages as a result of that willful violation. On June 18, 2007, this Court entered an Order (Doc. # 746) ("June 18 Order") setting forth the specific amount of Debtors' actual damages in the amount of $2,491.79 and awarded Debtors that amount in damages. The June 18 Order ordered Buckeye to remit $2,491.79 to Debtors within ten days following entry of the Order, *i.e.*, June 28, 2007. (June 18 Order at 2.)

On June 22, 2007, Buckeye filed Buckeye's Motion for Approval of Supersedeas or Cash Bond and Stay Pending Appeal, Memorandum and Notice (Doc # 753) ("Motion for Stay"). Buckeye's Notice provided that "any objection may be filed hereto within ten (10) days after the date of service shown in the Certificate of Service herein[.]"

(Motion for Stay at 3.) The date of service was June 22, 2007; accordingly, the objection period ran through July 2, 2007. As a consequence, the Motion for Stay is moot since entry of any order imposing a stay would occur only after Buckeye should have complied with the June 18 Order by remitting the damage award to Debtors.

To the extent the Motion for Stay is not deemed moot, and therefore denied, the Court finds that the Motion for Stay must be denied based on its lack of merit, as set forth below.

The Motion for Stay provides no basis to stay the May 31 Order and/or the June 18 Order other than noting that Buckeye filed a Notice of Appeal (Doc. # 718) and an Amended Notice of Appeal (Doc. # 749) appealing the May 31 Order and the June 18 Order. The two-paragraph Memorandum in support of the Motion for Stay provides no other facts and cites to only one case, *i.e.*, *Hunter v. S.K. Austin* Co. (*In re Beck*), 26 B.R. 945, (Bankr. N.D. Ohio 1983).

In re Beck fails to support Buckeye's request for a stay of the May 31 and June 18 Orders. The *Beck* case held that it was error to grant a discretionary stay without bond. (*Id.* at 947.) The Beck court quoted [then numbered] Rule 805 that granting a stay pending appeal is discretionary with the court and should be done on "such terms as will protect the rights of all parties in interest." FED. R. BANKR. P. 8005. (West 2004). The *Beck* court adopted the following standard from *Moore v. White Motor Corp.*, (*In re White Motor Corp.*), 25 B.R. 293 (N.D. Ohio 1982), in determining if a stay pending appeal should be issued:

1. Appellant is likely to succeed on the

merits of the appeal.

2. Appellant will suffer irreparable injury.
3. No substantial harm will come to appellee.
4. The stay will do no harm to the public interest.

In re Beck, 26 B.R. at 946.

Buckeye has failed to address any of the elements in the *White Motor Corp*. standard to obtain a stay. Buckeye has not argued, much less demonstrated, that it is likely to succeed on the merits of the appeal. Nor has Buckeye argued that it will suffer irreparable harm. Buckeye has not stated that it would be a hardship for it to pay Debtors the damage award. It appears highly doubtful that Buckeye could make even a colorable argument about irreparable harm since the damage award that Buckeye has been ordered to pay to Debtors is less than $2,500.00. Buckeye has not argued that no harm will come to Debtors. To the extent that Debtors have already incurred damages as a result of Buckeye's willful violation of the automatic stay, Debtors will be harmed by imposition of a stay and a delay in receipt of their actual damages. Moreover, and more importantly, to the extent that Buckeye may feel free to continue the State Court Litigation if a stay of the May 31 Order and June 18 Order were to be imposed, Debtors will certainly be harmed. Last, the public interest will be served by enforcement of the automatic stay in the Bankruptcy Code and imposition of sanctions for violation of such stay.

Based on the above, Buckeye has stated no reason whatsoever to justify the imposition of a stay pending appeal. It is not necessary to impose a stay of the May 31 and June 18 Orders to

protect the rights of all parties in interest. To the contrary, imposition of a stay would only benefit Buckeye at Debtors' expense.

This Court finds the Motion for Stay not to be well taken and hereby denies both the stay pending appeal and the request to post a supersedeas or cash bond.

IT IS SO ORDERED.

Kay Woods

Honorable Kay Woods
United States Bankruptcy Judge