

IT IS SO ORDERED.

**Dated: October 02, 2009
01:28:45 PM**



**Honorable Kay Woods
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE: *
* **CASE NUMBER 09-42767**
*
CONNIE MARIE HUGHES and *
MARK FREDERICK HUGHES, * **CHAPTER 13**
*
*
Debtors. * **HONORABLE KAY WOODS**
*

**ORDER (i) FINDING OHIO EDISON IN CONTEMPT;
(ii) FINDING OHIO EDISON IN VIOLATION OF AUTOMATIC STAY; AND
(iii) IMPOSING SANCTIONS AGAINST OHIO EDISON**

On August 27, 2009, this Court entered Order to Appear and Show Cause ("Show Cause Order") (Doc. # 33), which ordered Ohio Edison Company a/k/a FirstEnergy ("Ohio Edison"), through its authorized and/or designated representative, to appear at a hearing ("Hearing") on September 10, 2009, at 10:30 a.m. and show cause why it should not be found to have violated the automatic stay and why Debtors Connie Marie Hughes and Mark Frederick Hughes ("Debtors") should not be entitled to sanctions and recoveries provided for by 11 U.S.C.

§ 362(k). Subsequent to Debtors' Motion for Continuance of 9/10/09 Motion to Show Cause Hearing (Doc. # 36), on September 2, 2009, the Court entered Order (Doc. # 38), rescheduling the Hearing until October 1, 2009 at 10:30 a.m.

The Court issued the Show Cause Order in response to Debtor's [sic] Motion to Show Cause for Contempt for Failure to Comply with Automatic Stay (Doc. # 29), which was filed by Debtors on August 25, 2009. Debtors moved the Court for an order directing Ohio Edison to appear before the Court and show cause (i) why Ohio Edison should not be found to have committed a willful violation of the automatic stay provided for in 11 U.S.C. § 362 by disconnecting or attempting to disconnect electrical service to the Debtors' residence and/or continuing collection actions against Debtors; and (ii) why the Debtors should not be entitled to recover from Ohio Edison costs, attorney's fees, and, where appropriate, punitive damages for Ohio Edison's claimed violation of the automatic stay.

The docket in this case reveals that Debtors filed the instant chapter 13 case on July 24, 2009 ("Petition Date"). The automatic stay in 11 U.S.C. § 362 went into effect as of the Petition Date and stayed creditors such as Ohio Edison from taking action to collect pre-petition debts, even if such creditors did not have notice of Debtors' bankruptcy filing. As a consequence, Ohio Edison was stayed by § 362 from taking any action, including disconnection of electrical service, in an effort to collect on a pre-petition debt.

The Court held the Hearing on October 1, 2009, but no one

appeared on behalf of Ohio Edison. As a consequence of the failure of Ohio Edison to appear at the Hearing in contravention of the Show Cause Order, this Court finds Ohio Edison in contempt of court.

Counsel for Debtors appeared at the Hearing and represented that: (i) Ohio Edison disconnected electrical service at the Debtors' residence on August 19, 2009, less than one month after the Petition Date; (ii) given the timing of the disconnection, Ohio Edison's actions could not be based upon failure of Debtors to pay for use of electricity post-petition; (iii) Debtor Mark Frederick Hughes has a medical condition that requires him to use a breathing machine to sleep, which machine is run by electricity; (iv) Debtor Connie Marie Hughes was unable to work and lost wages in the amount of \$80.00 (four hours at \$20.00 per hour) because she was required to spend time to get Ohio Edison to reconnect electrical service; (v) Ohio Edison reconnected electrical service to Debtors' residence the evening of August 19, 2009; (vi) Ohio Edison had been served with notice of Debtors' bankruptcy, including Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines (Doc. # 7) on July 27, 2009; and (vii) Debtors incurred attorney's fees of \$1,000.00 as a result of the actions taken by Ohio Edison. Because no one from Ohio Edison was present to refute the representations of Debtors' counsel, the Court accepted such representations as an undisputed proffer of evidence.

This Court finds that: (i) Ohio Edison had actual notice of Debtors' bankruptcy case; (ii) despite such notice, Ohio Edison took

action to disconnect electrical service to Debtors' residence; (iii) Ohio Edison's action in disconnecting electrical service to the Debtors' residence was an attempt to collect on a pre-petition debt; and (iv) disconnection of electrical service caused Debtors actual damages represented by Mrs. Hughes's lost wages and attorney's fees. As a consequence, this Court finds that Ohio Edison violated the automatic stay provisions in 11 U.S.C. § 362 and that such violation was willful.

This case is similar to *Smith v. GTE North Inc.*, (*In re Smith*), 170 B.R. 111 (Bankr. N.D. Ohio 1994). In the *Smith* case, the Bankruptcy Court found that GTE had knowledge that the automatic stay applied to its disconnection of telephone service to collect a pre-petition debt. *Id.* at 115. The Bankruptcy Court found, "In view of the fact that GTE intentionally disconnected the Smiths' telephone service after receiving notice from the Smiths [sic] attorney that the bankruptcy code [sic] stayed its collection activities, the Court finds that GTE willfully violated the automatic stay." *Id.* at 116.

Section 362(k)(1) provides that "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 (West 2009). A creditor does not have to have specific intent to willfully violate the stay; actual notice of the bankruptcy is sufficient to cause a creditor's actions to be willful.

As noted above, a willful violation of the automatic stay entitles the injured debtors to recover actual damages, including costs and attorney's fees and, if appropriate, punitive damages. 11 U.S.C. § 362(k)(1). A violation of the automatic stay is "willful" so long as the creditor had notice of the bankruptcy filing. *In re Sharon*, 234 B.R. at 688. "As used in [current subsection 362(k)], 'willful,' unlike many other contexts, does not require any specific intent." *In re Bivens*, 324 B.R. 39, 42 (Bankr. N.D. Ohio 2004); see *In re Sharon*, 234 B.R. at 687-88 ("A violation of the automatic stay can be willful when the creditor knew of the stay and violated the stay by an intentional act."); see also *Johnston Env'tl. Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 618 (9th Cir. 1993); *Lansdale Family Rests., Inc. v. Weis Food Serv. (In re Lansdale Family Rests., Inc.)*, 977 F.2d 826, 829 (3d Cir. 1992).

In re Glanzer, 2008 Bankr. LEXIS 1141, *6 (Bankr. N.D. Ohio April 2, 2008).

Having found that Ohio Edison's violation of the stay was willful, this Court awards Debtors actual damages in the amount of \$80.00 and attorney's fees in the amount of \$1,000.00.

IT IS SO ORDERED.

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