

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: April 05 2010

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 09-37759
)	
Jeffrey P. Kerr)	Chapter 7
SS# *** ** 5244)	
)	
Debtor(s).)	JUDGE MARY ANN WHIPPLE

ORDER GRANTING DEBTOR’S MOTION TO HOLD NATIONAL CREDIT WORKS, INC. AND N.A.R.S. IN CIVIL CONTEMPT OF COURT AND TO IMPOSE SANCTIONS

The court held a further hearing on March 31, 2010, on Debtor’s motion for sanctions in contempt for an alleged violation of the automatic stay of 11 U.S.C. § 362. [See Doc. # 9]. Attorney for Debtor appeared in person at the hearing. There was no appearance by or on behalf of National Credit Works, Inc.

The court has jurisdiction over Jeffrey P. Kerr’s bankruptcy case under 28 U.S.C. § 1334. The motion for contempt sanctions is a core proceeding that this court may hear and determine under 28 U.S.C. 157(b)(2)(A) and the general order of reference entered in this district. General Order 84-1 of the United State District Court for the Northern District of Ohio.

To find civil contempt the court must consider “(1) did the respondent receive appropriate notice of the alleged contempt; (2) did the acts or failure to act constitute contempt of court; and (3) if so, what is the appropriate consequence.” *In re Sherelle M. Walker*, 257 B.R. 493, 496 (Bankr. N.D. Ohio 2001).

Debtor commenced this Chapter 7 case on November 6, 2009. The Clerk gave notice of the commencement of the case and of the automatic stay to creditors and parties in interest by first class United States Mail, postage prepaid, on November 11, 2009. [Doc. # 7]. N.A.R.S., which is the collection agency for National Credit Works and is a subsidiary of same, was sent notice of commencement of the case and of the automatic stay on November 11, 2009. After the commencement of the case, National Credit Works, Inc. received funds garnished from Debtor's bank account on November 30, 2009, and again on January 2, 2010, in the total amount of \$300. On January 7, 2010, Debtor's attorney again sent to National Credit Works' agent, N.A.R.S., notice of the bankruptcy case and a demand for return of the funds. Numerous oral requests for return of the funds were also attempted, all of which resulted only in the run around and dropped telephone calls. As of March 31, 2010, the improperly garnished funds have not been returned despite notice of the commencement of the case and of the automatic stay, demand for return of the improperly garnished and retained funds and notice of the contempt motion and of the hearings thereon. Neither of the hearing orders on the motion from this court sent to National Credit Works and N.A.R.S. [Doc. ## 12, 15], have been returned to the court as undeliverable. [See Doc. # 4]. Thus the contempt claimed is post-petition garnishment and then retention after demand for return of funds of Jeffrey P. Kerr by National Credit Works and/or its agent N.A.R.S. in the total amount of \$300, both actions in violation of the automatic stay of 11 U.S.C. § 362(a). Violations of the automatic stay constitute contempt of the court in which the stay arises. See, e.g., *General Motors Acceptance Corporation v. Rozier (In re Rozier)*, 376 F.3d 1323 (11th Cir. 2004); *Rosenberg v. Seal (In re Seal)*, Case No. 96-2347, 1997 U.S. App. LEXIS 26467 (6th Cir. Sept. 22, 1997); *Newman v. Ethridge (In re Newman)*, 803 F.2d 721 (6th Cir. 1986).

The court finds based on the communication from Debtor's counsel, the contempt motion and the court's hearing orders that National Credit Works, Inc. and N.A.R.S. received appropriate notice of the alleged contempt and of the hearings. The improperly garnished funds have not been returned to Debtor. Accordingly, National Credit Works, Inc. and N.A.R.S. are found to be in civil contempt of this court for failing to turnover to Debtor Jeffrey P. Kerr the total amount of \$300 seized and retained in violation of the automatic stay.

As a sanction, contemnor(s) must pay Debtor directly the total sum of \$300. The payment to Debtor must be made in immediately available funds, such as by certified check or money order, sent to Debtor's lawyer. A copy of the check or money order must also be filed in this court.

As a further sanction, necessary to secure compliance with the automatic stay because they have to date ignored and flaunted notices of commencement of this case and Debtor's demands for return of improperly seized funds, as well as these proceedings, the court imposes a fine of \$25 per day payable to

the court Clerk until the contemnors comply with the demand and with this order and return the total amount of \$300 to Jeffrey P. Kerr. The purpose of the fine is to coerce and secure contemnors' compliance with the automatic stay and with this order. The \$25 per day fine shall commence accruing on the first business day after entry of this order on the court record. However, the civil contempt will be considered as purged and the coercive fine will be abated completely if the \$300 is paid to Debtor on or before May 3, 2010.

For cause shown and based upon clear and convincing evidence,

IT IS ORDERED that Debtor's motion for sanctions in contempt for an alleged violation of the automatic stay of 11 U.S.C. § 362 [Doc. # 9] is **GRANTED**; and

IT IS FURTHER ORDERED that National Credit Works, Inc. and N.A.R.S. are each adjudged to be in civil contempt of this court; and

IT IS FURTHER ORDERED that as a sanction for contempt National Credit Works and/or N.A.R.S. must pay to Debtor Jeffrey P. Kerr the total amount of \$300 in immediately available funds by sending same to Debtor's attorney of record and filing evidence of payment with this court; and

IT IS FURTHER ORDERED that as a further sanction for contempt necessary to compel compliance with the automatic stay of 11 U.S.C. § 362 and with this order, National Credit Works, Inc. and N.A.R.S. and are hereby assessed a joint and several fine of \$25 day per day payable to the Clerk of this Court, to be disbursed upon further order of the court, commencing on the first business day after entry of this order, in addition to the amount of the funds they are required to repay Debtor. Unless the contempt is purged as set forth below, this coercive fine will continue to accrue every day until one or the other of them complies with this order and pays Debtor the sum of \$300 seized and retained in violation of the automatic stay; and

IT IS FINALLY ORDERED that National Credit Works, Inc. and N.A.R.S. may purge the contempt and have the \$25.00 per day fine abated completely by paying Debtor the total sum of \$300 as set forth herein on or before **May 3, 2010**.