

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Richard Alan Pizzuti,

Debtor.

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**Case No. 6:00-bk-08586-ABB
Chapter 13**

ORDER

This matter came on Leroy and Eleanor King's Motion for Relief From Automatic Stay pursuant to 11 U.S.C. § 362. The following Findings of Fact and Conclusions of Law are made after reviewing the evidence.

FINDINGS OF FACT

Debtor is a branch manager of Allen Douglas Securities ("ADS"), a securities firm in Florida. Leroy and Eleanor King ("Kings") established brokerage accounts and agreements ("Accounts") with ADS in September 1999. Francis Kahn ("Kahn"), a registered broker employed by ADS, was the financial consultant for the Accounts.

Debtor filed a Chapter 13 petition in November 2000. Kings were not listed as creditors since they had not asserted a claim against the Debtor at that time. The Kings filed a securities arbitration action alleging churning and other securities-fraud claims against ADS in November 2001. A Mediated Settlement Agreement ("Agreement") was negotiated in December 2002 among the Kings, Debtor, Kahn, and American Brokerage & Trading, Inc. ("ATI"), the parent corporation of ADI.

The Agreement obligated Kahn, Debtor, and ATI to pay Kings the sum of \$250,000 over five years. ATI made 19 payments under the agreement and thereafter defaulted. Kings attempted to pursue its claim against the Debtor. Debtor served a Notice of Bankruptcy to the Kings and amended his schedules to add the Kings in June 2004. The Kings filed a Motion for Relief from Automatic Stay; Debtor objected to the Motion.

CONCLUSIONS OF LAW

Debtor's liability under the Agreement is a prepetition debt that is subject to the Automatic Stay. The Automatic Stay pursuant to 11 U.S.C. § 362 (a)(1) precludes creditors from engaging in the following act against a Chapter 13 Debtor:

the commencement or continuation ... of a judicial ... action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title.

Creditors are precluded from commencing or continuing any action to collect prepetition debts from a Chapter 13 Debtor.

A prepetition claim pursuant to 11 U.S.C. § 101(5) is established where (i) events occurring before confirmation create a relationship such as contract or privity between a claimant and the debtor's product; and (ii) the basis for liability is the debtor's prepetition conduct in selling the allegedly defective product.¹

The King's claim against Debtor for breach of the Agreement is the continuation of their prior securities claims against him. The alleged failure of the Debtor to properly supervise Kahn under the prepetition agreement for broker services is the basis of King's claim. The King's claim is a prepetition claim subject to the Automatic Stay. Therefore it is

ORDERED, ADJUDGED AND DECREED that Leroy and Eleanor King's Claim against Debtor for breach of Agreement is a **PREPETITION** claim; it is further

ORDERED, ADJUDGED AND DECREED that Leroy and Eleanor King's Motion for Relief from Automatic Stay is **DENIED**.

Dated this 30th day of November 2004.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

¹ In re Piper Aircraft Corp., 58 F.3d 1573 (11th Cir. 1995).