

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:08-bk-00236-ABB
Chapter 7

GENOVEVA VARGAS-PEREZ,

Debtor.

ORDER

This matter came before the Court on the Motion for Sanctions (Doc. No. 18) filed by Genoveva Vargas-Perez, the Debtor herein ("Debtor"), seeking an award of sanctions against Sears, Roebuck & Co. ("Sears") for alleged violations of the automatic stay of 11 U.S.C. Section 362(a) for post-petition garnishment of the Debtor's wages. An evidentiary hearing was held on May 5, 2008 at which the Debtor and her counsel appeared. Sears has not responded to the Motion.

The Debtor was directed to file an affidavit setting forth: (i) the amounts and dates of garnishment; (ii) the steps taken to advise Sears of the bankruptcy case; and (iii) the attorney's fees and costs sought. The Debtor filed an Affidavit (Doc. Nos. 29, 30) stating wages of \$390.51 and \$373.50 were garnished on January 16 and January 30, 2008, respectively, by Sears through its counsel The Law Offices of Erskine & Fleisher. No affidavit was filed setting forth the steps taken to advise Sears of the Debtor's bankruptcy case and the attorney's fees and costs sought.

The automatic stay arose on January 12, 2008 pursuant to 11 U.S.C. Section 362(a) barring any action by Sears to garnish the Debtor's wages post-petition. The Debtor was protected by the automatic stay when her wages were garnished by Sears on January 16 and January 30, 2008. The garnished funds totaling \$764.01 are due to be returned to the Debtor.

The Debtor seeks an award of actual, including attorney's fees and costs, and punitive damages against Sears pursuant to 11 U.S.C. Section 362(k). She has not established Sears willfully violated the automatic stay and she is

entitled to sanctions pursuant to 11 U.S.C. Section 362(k).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion (Doc. No. 18) is hereby **GRANTED IN PART** and Sears is hereby directed to turnover the garnished funds of \$764.01 to the Debtor forthwith; and it is further

ORDERED, ADJUDGED and DECREED that all other relief sought in the Debtor's Motion is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that the Court hereby retains jurisdiction to enforce this Order and to modify the terms of the relief provided herein in the event Sears fails to turnover the garnished funds.

Dated this 12th day of June, 2008.

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