

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

In re:

JOSEPH R. O'LONE,

Case No.: 3:00-bk-5003-JAF

Debtor.

Chapter 7

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This case came before the Court on the Motion for Sanctions filed by Joseph R. O'Lone ("Debtor"), seeking sanctions against the Social Security Administration of the United States of America (the "Agency") for violation of the discharge injunction pursuant to 11 U.S.C. Section 524(a) of the United States Bankruptcy Code (the "Code"). Hearings in this proceeding were held on September 16, 2008 and October 7, 2008. In lieu of oral argument, the Court elected to take the matter under advisement and directed the parties to submit briefs in support of their respective positions. Upon the evidence presented and the arguments of the parties, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

In 1999, Debtor filed an application with the Agency seeking disability benefits. At that time, the Agency determined Debtor had a disabling medical condition entitling him to receive disability benefits, and it set Debtor's disability onset date as August 1998.<sup>1</sup> In January 2000, the Agency began paying disability benefits to Debtor, including an initial lump sum payment in the amount of \$10,905.75, representing benefits payable for the period from February 1999 through

---

<sup>1</sup>Once the Agency establishes an onset date, an applicant is entitled to benefits starting the sixth full month of disability following the onset date. (Tr. at 127; Cr.'s Ex. 10). For example, an applicant with an onset date of August 1998 would be entitled to benefits starting in February 1999.

December 1999, and a payment in the amount of \$3,635.25 to Plaintiff's disability attorney. (Dtr.'s's Ex. 9, 20; Cr.'s Ex. 6, 9, 10).

On June 29, 2000, Debtor filed a Chapter 7 bankruptcy petition and a discharge was entered on October 11, 2000. (Doc. Nos. 1, 11). In 2001, the Agency discovered Debtor had previously returned to work with his prior employer, but failed to report his work activity to the Agency and continued to receive disability benefits while he was working. The Agency changed Debtor's onset disability date from August 1998 to January 1, 2000 and determined he was ineligible for the benefits he received for the period covering February 1999 to May 2000. (Cr.'s Ex. 2, 8, 9, 10, 11). The Agency concluded Debtor received an overpayment of benefits in the amount of approximately \$20,905. (Tr. at 127; Cr.'s Ex. 1, 9). In October 2002, the Agency attempted to offset Debtor's disability benefits to recoup the overpayment, but Debtor received his benefits through the Agency's critical payment system. (Cr.'s Ex. 6, 11).

On December 13, 2002, at Debtor's request, his Chapter 7 estate was reopened to add certain creditors, including the Agency. (Doc. Nos. 17, 18). Debtor filed an adversary proceeding on July 15, 2003, to determine the dischargeability of the debt owed to the Agency for the overpayment of benefits in the amount of \$20,905. (Dtr.'s's Ex. 4). A clerk's default was entered on December 18, 2003. (Dtr.'s Ex. 4). On January 9, 2004, a default judgment was entered discharging the debt to the Agency in the amount of \$20,905. (Dtr.'s Ex 5). The bankruptcy estate was closed on May 29, 2004. (Cr.'s Ex. 14).

On April 26, 2005, after an August 2004 hearing at which Debtor appeared and presented evidence, an administrative law judge from the Department of Health and Human Services issued a decision imposing a civil monetary penalty and an assessment (the "Penalty and Assessment") in

lieu of damages totaling \$46,810, finding that Debtor made false and misleading statements to the Agency resulting in the receipt of disability benefits. (Tr. at 109; Cr.'s Ex. 1).

On July 14, 2005, on the Debtor's motion, the Court again reopened the bankruptcy estate. (Doc. Nos. 30, 31). On August 4, 2005, Debtor filed a Motion for Sanctions and Request for Enjoining the Creditor from Collection of the Discharged Debt against the Agency, alleging the Agency had demanded payment of a discharged debt and stopped payment of benefits to satisfy a discharged debt. (Doc. No. 33). On August 31, 2005, the Court held a hearing on Debtor's motion without the presence of the Agency. (Dtr.'s Ex. 11). Debtor testified the Agency was withholding three months of benefits due in 2003. The Court found that the Agency had violated the discharge injunction and, by Order dated September 22, 2005, the Court ordered the Agency to pay all benefits it was withholding and to pay Debtor's attorney fees. (Tr. at 15; Doc. No. 39).

On November 7, 2005, the Agency moved for relief from the Court's Order entered September 22, 2005, arguing it failed to appear and defend against Debtor's motion for sanctions because of improper service of process by Debtor. (Doc. Nos. 41, 43). On December 14, 2005, the Agency, after reviewing Debtor's payment history, paid \$929.10 to Debtor, representing the balance of benefits withheld to recover Debtor's overpayment. (Cr.'s Ex. 6).

At the Court's insistence, the parties participated in mediation on April 10, 2006 and reached an agreement (the "Settlement Agreement") resolving all pending issues. (Dtr.'s Ex. 8). In the Settlement Agreement, the Agency waived its objections based on improper service, agreed to pay the mediator's entire fee, agreed to pay Debtor's attorney's fees in the amount of \$2,850 and agreed to compromise the Penalty and Assessment. Specifically, the Agency agreed to reduce the Penalty and Assessment against the Debtor from \$46,810 to \$26,000 and to collect this amount in \$100 monthly deductions from Debtor's disability benefits. The Agency also agreed to repay any

benefits withheld if Debtor could substantiate such claim in the administrative process.<sup>2</sup> Finally, the parties agreed to release any and all claims that could have been raised at the time. By Order dated May 9, 2006, the Court permitted the withdrawal of the Agency's Motion for Relief from the Sanctions Order. (Doc. No. 59). On July 13, 2006, the Court closed the bankruptcy estate. (Doc. No. 62).

There is no dispute that the Agency paid the full mediator's fee and paid Debtor's attorney the agreed amount of \$2,850. (Tr. at 113). There also seems to be no dispute that, since August 2006, the Agency has been paying Debtor's full benefit less the \$100 monthly deduction to which Debtor agreed to satisfy the \$26,000 debt. (Tr. at 13, 114, 135; Cr.'s Ex. 6).

However, Debtor alleges the Agency willfully breached the Settlement Agreement by denying him access to the administrative process and the opportunity to demonstrate he was owed additional benefits. (Tr. at 95). Debtor initially testified that Donna Maitland, the district manager of the Agency's Daytona Field Office, turned him away and he was offered no other course to prove his entitlement to unpaid benefits. (Tr. at 95). Debtor subsequently testified that Ms. Maitland told him she could accept any document he wished to submit to the Agency. (Tr. at 115). Ms. Maitland also sent Debtor a written follow-up letter in response to his inquiry. (Dtr.'s Ex. 14).

Also, Reginald Speegle, the Agency attorney administratively handling Debtor's case, requested a review of Debtor's payment history after being contacted by the Agency's Daytona Field Office. (Tr. at 19-20). The Agency's Central Payment Center conducted at least two administrative reviews. (Tr. at 20-23). As a result of the Agency's review, Debtor was advised

---

<sup>2</sup>The Settlement Agreement was silent as to the exact manner and method of administrative process.

that no benefits were owed. Unsatisfied with the manner and outcome of the Agency's review,<sup>3</sup> Debtor contacted his congressman who inquired of the Agency on Debtor's behalf. By letter dated June 4, 2007, the Agency further set forth the benefits amounts paid to the Debtor as reflected in the Agency's records, indicating no benefits were owed. (Dtr.'s Ex. 16). Neither Debtor nor Debtor's counsel produced any documents in response challenging the accuracy of the Agency review of Debtor's payment history. (Tr. at 23).

Instead, on December 19, 2007, Debtor again moved to reopen his estate and filed the instant Motion for Sanctions against the Agency, alleging violations of the discharge injunction and breach of the Settlement Agreement. (Doc. Nos. 64, 66). His estate was reopened on December 20, 2007. (Doc. No. 67). In the Motion for Sanctions, Debtor requests the Court: 1) find the Agency willfully violated prior orders of the Court entered before the Settlement Agreement; 2) find the Agency willfully breached the Settlement Agreement; 3) find that Debtor suffered damages by virtue of such violations and breach; and 5) award sanctions, compensatory and punitive damages including an award of costs, attorney's fees, accountant fees and other expert fees.

### **CONCLUSIONS OF LAW**

#### **A. Alleged Violation of the Discharge Order**

Section 524 of the Code operates as a post-discharge injunction against the collection of debts discharged in bankruptcy and is thus the embodiment of the Code's fresh start concept. In re Joanne Riser, 298 B.R. 469, 472 (M.D. Fla. 2003). A bankruptcy court's statutory contempt powers under 11 U.S.C. § 105 grant it the authority to impose punitive damages for a violation of

---

<sup>3</sup>By letter dated March 20, 2007, the Agency indicated that, based upon its review, Debtor's disability onset date was changed from January 2000 back to August 1998. (Dtr.'s Ex. 15). However, the Agency explained in the June 4, 2007 letter to Debtor's counsel that the onset date change was processed in error and that Debtor's disability onset dated continued to be January 2000. (Dtr.'s Ex. 16).

the discharge injunction. In re Nibbelink, 403 B.R. 113, 121 (M.D. Fla. 2009). A court may hold a creditor in contempt under Section 105 for willful violations of the discharge injunction. Riser, 298 B.R. at 472. A creditor's conduct is considered willful if the creditor knew that the order was invoked or in effect and intended the actions which violated the order. Id. (citing Hardy v. United States (In re Hardy), 97 F.3d 1384, 1390 (11th Cir. 1996)).

Debtor alleges the Agency willfully violated the Court's prior discharge order, entered before the Settlement Agreement, by attempting to collect a discharged debt. Specifically, Debtor contends that the Agency's \$46,810 Penalty and Assessment, which it compromised down to \$26,000, was imposed in violation of the discharge. Debtor also argues that the Agency's deduction of \$100 from each of his monthly disability benefit payments, pursuant to the Settlement Agreement, constitutes a willful violation of the discharge injunction.

The Court discharged Debtor's debt to the Agency in the amount of \$20,905 (regarding the overpayment in 1999 and 2000) on January 9, 2004. (Dtr.'s Ex 5). The Penalty and Assessment was issued on April 26, 2005, over a year after the discharge; hence, the Penalty and Assessment was not a pre-discharge debt. Further, a debt is exempt from discharge under Section 523(a)(7) of the Code if it is a fine, penalty or forfeiture, is payable to a governmental unit and is not compensation for the actual pecuniary loss. 11 U.S.C. § 523(a)(7); In re Verola, 336 B.R. 547, 550 (S.D. Fla. 2004). If there is the "slightest penal purpose behind the imposition of" an order, then a debt may be characterized as a nondischargeable fine, penalty or forfeiture under Section 523(a)(7). In re Telsey, 144 B.R. 563, 565 (S.D. Fla. 1992).

The Court finds that, under Section 523(a)(7), the Penalty and Assessment was a fine, penalty or forfeiture payable to a governmental unit and was not compensation for actual pecuniary loss. Thus, the Penalty and Assessment would have been nondischargeable in

bankruptcy if Debtor had sought to discharge it. Because it was a post-discharge debt and it would have been nondischargeable in bankruptcy, the Court finds that the imposition of the Penalty and Assessment did not constitute a violation of the discharge injunction.<sup>4</sup>

Pursuant to the terms of the Settlement Agreement, beginning in August 2006 until the present, the Agency withheld \$100 per month from Debtor's disability benefits to satisfy the compromised value of the Penalty and Assessment. (Tr. at 135; Cr.'s Ex. 6). Because the imposition of the Penalty and Assessment did not constitute a violation of the discharge injunction, the Agency's deduction of \$100 from each of his monthly disability benefit payments in satisfaction of the Penalty and Assessment also does not constitute a violation of the discharge injunction.

B. Alleged Breach of the Settlement Agreement

During the hearings and in his supportive briefs, Debtor vacillated between arguing 1) the Settlement Agreement is void because he did not receive adequate consideration, and 2) the Settlement Agreement is binding but the Agency breached it. To briefly address the first of these arguments, the Court finds that the Settlement Agreement is a valid contract and adequate consideration was exchanged. The terms and obligations of the Settlement Agreement are definite and the intentions of the parties are clear. The parties sought to end the litigation with regard to the issues then in dispute and to preclude any further suits or motion practice on those issues. As consideration, each party agreed to forego the right to pursue any claims that could have been raised at that point. In Florida, forbearance from pursuing a legal cause of action or right, where there is a genuine belief that a viable claim exists, constitutes adequate consideration for an agreement. Citibank Int'l v. Mercogliano, 574 So.2d 1190, 1191 (Fla. 3rd Dist. Ct. App. 1991);

---

<sup>4</sup> Additionally, in the Settlement Agreement, the parties agreed to release any and all claims that could have been

First Texas Savings Ass'n v. Comprop Inv. Properties Ltd., 752 F.Supp. 1568, 1572 (M.D. Fla. 1990).

The Agency paid Debtor's attorney's fees, paid his share of the mediator's fee and allowed him to continue receiving disability benefits while paying off the Penalty and Assessment with only a \$100 monthly deduction as an installment payment. Most importantly, Debtor also reduced a nondischargeable debt down from \$46,810 to \$26,000. Debtor's argument that he received no consideration in return for his entry into the Settlement Agreement is without merit.

In the alternative, Debtor argues the Agency willfully breached the Settlement Agreement by denying him a meaningful opportunity to demonstrate whether the Agency had withheld benefits which remained unpaid. To recover for breach of contract, Florida law requires the nonbreaching party to demonstrate the existence of a valid contract, a material breach and resulting damages. J.J. Gumberg Co. v. Janis Services, Inc., 847 So.2d 1048, 1049 (Fla. 4th Dist. Ct. App. 2003).

The hearings and supportive briefs contained significant detailed factual allegations regarding specific pre-Settlement Agreement benefit payments. The parties argued extensively about whether specific benefits were or were not paid, and if so, whether payment was timely. Nonetheless, on the instant Motion for Sanctions, the issue before the Court is whether the Agency willfully breached the Settlement Agreement; the Court will not impose sanctions based on nothing more than disagreements amongst parties as to whether specific pre-Settlement Agreement benefits were in fact paid.

The Settlement Agreement required the Agency to repay any benefits withheld if Debtor could substantiate such claim in the administrative process. The Settlement Agreement is silent as

---

raised at the time. Consequently, any claims based on alleged violations of the discharge were released by Debtor under the terms of the Settlement Agreement.



to the exact nature or manner of the administrative review process. Debtor wanted direct input and participation in the review process. He concedes he had an accounting of his benefits, but he believes the Agency's review was erroneous. (Tr. at 115).

The Settlement Agreement did not require the Agency to accept Debtor's assertions based upon Debtor's interpretation of certain documents. After the Agency conducted its own review of Debtor's payment history and provided such information to Debtor, Debtor had the opportunity to produce persuasive evidence that he was owed withheld benefits. The fact that the Agency was not persuaded that Debtor was owed any additional benefits does not constitute a willful breach of the Settlement Agreement. Moreover, at the hearings and in the supportive briefs, Debtor has not produced persuasive evidence to substantiate his assertions that the Agency owes him any withheld benefits. Accordingly, the Court finds the Agency did not willfully breach the Settlement Agreement and Debtor failed to establish that he was prevented from demonstrating that he was owed additional benefits.

### **CONCLUSION**

Debtor argues the imposition of the Penalty and Assessment constituted a willful violation of the Court's previous discharge order. However, the Penalty and Assessment occurred after the discharge and would have been nondischargeable. Debtor also argues the Agency willfully breached the Settlement Agreement by denying him the opportunity to demonstrate that he was owed additional benefits. However, the Agency has conducted multiple accountings of Debtor's payment history and Debtor has not persuasively substantiated his claims for withheld benefits. The Court finds that the Agency neither willfully violated the Court's orders, nor willfully breached the Settlement Agreement. Consequently, the Court need not address Debtor's alleged

damages. The Court denies the Motion for Sanctions and will enter a separate Order consistent with these Findings of Fact and Conclusions of Law.

**DATED** August 20, 2009 in Jacksonville, Florida.

/s/ Jerry A. Funk

---

**Jerry A. Funk**  
United States Bankruptcy Judge

**Copies Furnished To:**

Robert N. Reynolds, Attorney for Debtor  
Ronnie S. Carter, Attorney for United States of America