

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No.: 6:09-bk-02781-ABB
Chapter 7

BRENDA S. HALLUM,

Debtor.

ORDER

This matter came before the Court on the Motion for Sanctions (Doc. No. 10) filed by Brenda S. Hallum, the Debtor herein (“Debtor”), seeking an award of sanctions against Progressive Financial for violation of the automatic stay of 11 U.S.C. Section 362(a). An evidentiary hearing was held on April 27, 2009 at which the Debtor and her counsel appeared. No response to the Motion for Sanctions was filed and no appearance has been made by Progressive Financial.

The Debtor filed this bankruptcy case on March 10, 2009. The automatic stay of 11 U.S.C. Section 362(a) immediately arose barring any creditors from taking action to collect, assess, or recover against the Debtor a prepetition debt. The Debtor listed Progressive Financial in Schedule F as the representative of the Department of Treasury with a general unsecured claim of \$11,549.56 (Doc. No. 1).

Notice of the Debtor’s bankruptcy filing was issued to Progressive Financial and the Department of Treasury on March 19, 2009 pursuant to the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines (Doc. No. 9) (“Notice”). The Notice advised parties of the existence of the automatic stay setting forth in large bold-face type “**CREDITORS MAY NOT TAKE CERTAIN ACTIONS**” and stating:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor’s property . . . If you

attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

(Doc. No. 9). The automatic stay has been in force throughout the pendency of this case. Progressive Financial at no time sought relief from the automatic stay.

Progressive Financial garnished the Debtor’s bank account on March 12, 2009 for \$300.00. Debtor’s counsel advised Progressive Financial the Debtor had filed for bankruptcy. Progressive Financial garnished the Debtor’s bank account on March 18, 2009 for \$300.00 and caused the Debtor to be charged an overdraft charge of \$35.00. Debtor’s counsel sent the Notice to Progressive Financial by facsimile on March 20, 2009. Progressive garnished the Debtor’s bank account on March 26, 2009.

Progressive Financial did not respond to counsel’s communications and has not returned the Debtor’s funds.

Section 362(k)(1) of the Bankruptcy Code provides for the recovery of damages for any “willful violation” of the automatic stay:

[A]n 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(k)(1).¹ A “willful violation” of the automatic stay occurs when the creditor “(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay.” *Jove Eng’g, Inc. v. I.R.S.*, 92 F.3d 1539, 1555 (11th Cir. 1996).

Progressive Financial’s actions were knowing and intentional. Its garnishment actions were attempts to collect a pre-petition debt. It garnished the Debtor’s bank account three times knowing the Debtor had filed for bankruptcy and

¹ Subsection (2) of 11 U.S.C. 362(k) is not applicable to this matter.

the automatic stay was in effect. Each garnishment constitutes a violation of 11 U.S.C. 362(a). Progressive Financial intended the actions which violated the stay. It willfully violated the automatic stay of 11 U.S.C. Section 362(a). Jove Eng'g, Inc. v. I.R.S., 92 F.3d at 1555.

Dated this 28th day of May, 2009.

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

The Debtor suffered actual damages, including attorney's fees and costs, as a result of Progressive Financial's willful violation of the automatic stay. An award of actual and punitive damages is appropriate pursuant to 11 U.S.C. Section 362(k). The Debtor is entitled to actual damages of \$1,000.00 for attorney's fees incurred and punitive damages of \$1,000.00 pursuant to 11 U.S.C. Section 362(k).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Progressive Financial committed willful violations of the automatic stay of 11 U.S.C. Section 362(a) and an award of actual and punitive damages is appropriate pursuant to 11 U.S.C. Section 362(k); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion for Sanctions (Doc. No. 10) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that the following persons are hereby awarded damages pursuant to 11 U.S.C. Section 362(k) against Progressive Financial, with such amounts to be paid by Progressive Financial forthwith: (i) Debtor's counsel Carole Suzanne Bess in the amount of \$1,000.00; and (ii) Debtor Brenda S. Hallum in the amount of \$1,000.00; and it is further

ORDERED, ADJUDGED and DECREED that Progressive Financial is hereby enjoined pursuant to 11 U.S.C. Sections 362(a) and 105(a) from taking any further collection action against the Debtor; and it is further

ORDERED, ADJUDGED and DECREED that the Court retains jurisdiction to assess whether the imposition of additional sanctions may be appropriate.

A separate Judgment consistent with these findings and rulings shall be entered contemporaneously.