


ORDERED.

Dated: July 26, 2016


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

STEPHEN DOUGLAS PIZZUTI and
KRISTEN ANN PIZZUTI,

Case No. 6:15-bk-09016-CCJ
Chapter 7

Debtors.

**ORDER DENYING DEBTOR'S MOTION FOR SANCTIONS
AGAINST GATAN FOR VIOLATION OF THE AUTOMATIC STAY**

This case came before the Court on March 16, 2016, for trial on the Debtor's Motion for Sanctions Against Gatan for Violation of the Automatic Stay (Doc. No. 11; the "Motion"). The Court having taken evidence and considered the record in this case, denies the Motion for the reasons set forth below.

The Debtor is a stockbroker. Gatan is an elderly widow who resides in California.¹ Prior to the petition date, Gatan filed a statement of claim in an arbitration proceeding before the

¹ Gatan was not present at the trial on the Motion. Though Gatan is represented by counsel in the FINRA Proceeding, she is a *pro se* creditor in this bankruptcy case and was unable to attend. *See* Doc. No. 28.

Financial Industry Regulatory Authority (the “FINRA Proceeding”²), alleging that the brokerage firm that previously employed the Debtor caused Gatan to lose a significant portion of her retirement assets.³

Approximately one month before the petition date, Gatan moved to add the Debtor as a party to the FINRA Proceeding.⁴ After Gatan moved to add the Debtor as a party, but before FINRA ruled on the motion, the Debtor filed his Chapter 7 petition in the present case. Approximately one month later, FINRA entered an order adding the Debtor as a party to the FINRA Proceeding.⁵ Upon receiving notice of the Debtor’s bankruptcy filing, however, FINRA indefinitely stayed the FINRA Proceeding as to the Debtor.⁶

Notwithstanding the fact that Gatan took no postpetition action against the Debtor, the Debtor filed the Motion, asking this Court to find that Gatan willfully violated the automatic stay because she failed to prevent the entry of FINRA’s order adding the Debtor as a party to the FINRA Proceeding. The Debtor contends that, once Gatan had notice of the Debtor’s bankruptcy case, she had an affirmative duty to withdraw the motion seeking to add the Debtor as a party. The Debtor now requests (i) \$1,000 in damages; (ii) \$5,000 for attorney’s fees and costs; and (iii) an order directing Gatan to file a motion vacating the order adding the Debtor as a party to the FINRA Proceeding.

In support of the Motion—and Gatan’s “affirmative duty” to undo the purported stay violation—the Debtor cites to cases involving actions filed against debtors *postpetition*;⁷

² Case styled *Zenaida P. Gatan v. Merrimac Corporate Securities, Inc. et al*, in Arbitration Before the Financial Industry Regulatory Authority, FINRA DR. No. 14-03343.

³ Doc. No. 31, Ex. 1.

⁴ Doc. No. 31, Ex. 2.

⁵ Doc. No. 31, Ex. 3.

⁶ Doc. No. 31, Ex. 6.

⁷ See *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210 (9th Cir. 2002); *Cox v. Specialty Vehicle Sols. LLC*, No. CV 15-80-ART, 2015 WL 7302189 (E.D. Ky. Nov. 18, 2015).

garnishment actions, the result of which was a continued deprivation of debtors' assets;⁸ and cases involving the entry of judgments establishing debtors' liability.⁹ All of the authority the Debtor cites is, however, distinguishable from the present case. Here, the FINRA Proceeding was filed *prepetition*, and Gatan moved to add the Debtor as a party *prepetition*. While it is true that FINRA entered the order adding the Debtor as party to the FINRA Proceeding *postpetition*, the Debtor incurred no deprivation of assets akin to a garnishment proceeding, and FINRA's order did not impute liability to the Debtor in any way. Thus, the Debtor has failed to point to any authority that would justify the relief sought.

The Court is sympathetic to the Debtor's situation and realizes that, by virtue of his employment as a stockbroker, the Debtor is inconvenienced by being a named party to the FINRA Proceeding. Unfortunately for the Debtor, however, Gatan's *prepetition* motion to add the Debtor as a party to the FINRA Proceeding simply did not violate the automatic stay. Further, Gatan had no affirmative duty to prevent the entry of FINRA's order adding the Debtor as a party.

Accordingly, it is ORDERED that the Motion is denied.

Attorney David McFarlin is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of this order.

⁸ See *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210 (9th Cir. 2002); *In re Vaughn*, 542 B.R. 589 (Bankr. M.D. Ala. 2015); *In re Mims*, 209 B.R. 746 (Bankr. M.D. Fla. 1997).

⁹ See *In re Soares*, 107 F.3d 969 (1st Cir. 1997); *In re Wright*, 75 B.R. 414 (M.D. Fla. 1987).