


ORDERED.

Dated: October 05, 2018


Cynthia C. Jackson
United States Bankruptcy Judge

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

In re:

Americo Lopez,

Case No. 6:14-bk-13940-CCJ

Debtor.
_____/

**ORDER GRANTING DEBTOR'S MOTION
FOR SANCTIONS AGAINST UNIVERSITY HEALTH SYSTEM, CARELINK**

This case came before the Court for trial on the Debtor's Motion for Sanctions for Violation of Order of Discharge Granted Under Section 727 of Title 11 against University Health System, Carelink (Doc. No. 22, the "Motion for Sanctions"). Although properly noticed of both the Motion for Sanctions and trial, the creditor, University Health System, Carelink ("UHSC") did not respond to the Motion for Sanctions or appear at trial. By the Motion for Sanctions, the Debtor argues that UHSC violated the discharge injunction by continuing to request payment from the Debtor, and that the Court should sanction UHSC by awarding the Debtor actual and punitive damages. The Court, having taken evidence and considered the record in this case, grants the Motion for Sanctions, and awards the Debtor \$18,312.35 for damages.

Background

The Debtor, Americo Lopez (the “Debtor”), is a retired man in his eighties that has an income of less than \$900 a month, consisting of social security payments and food stamps.¹ The Debtor filed for relief under Chapter 7 of the Bankruptcy Code on December 31, 2014. The Debtor’s bankruptcy schedules list UHSC as an unsecured creditor owed \$591.60 for medical services.² The clerk issued a Notice of Chapter 7 Bankruptcy Case and served it on UHSC.³ The Court entered an order granting the Debtor a discharge under Section 727 of the Bankruptcy Code on April 24, 2015 (the “Discharge Order”).⁴ The clerk served UHSC with the Discharge Order and closed the bankruptcy case.

One month after entry of the Discharge Order, UHSC sent the Debtor a letter demanding payment.⁵ By the demand letter, UHSC stated that the Debtor still owed UHSC \$48.13 after UHSC adjusted the Debtor’s previous account balance of \$591.60 (the amount listed in the Debtor’s bankruptcy schedules). The letter requested that the Debtor pay UHSC \$48.13, provided the Debtor with payment instructions, and did not contain any language referring to the Debtor’s bankruptcy case.

The Debtor testified that for the next two years UHSC contacted him every month demanding payment. The Debtor kept another 15 demand letters that UHSC sent him, all of which are almost identical to the initial demand letter.⁶ The Debtor testified that receiving the payment demands from UHSC distressed him because he did not have the money to pay UHSC. The Debtor stated that during this time he could not sleep or eat well. And because of UHSC’s payment demands, the Debtor sought psychiatric care.⁷ The Debtor stated that psychiatric care did help with his concerns about paying UHSC for a while. The Debtor’s sister, Alba Nedia Lopez (“Lopez”) testified that she saw the Debtor frequently during this time. The Debtor would visit Lopez after receiving a demand letter from UHSC and tell her that he couldn’t pay UHSC and

didn't know what to do. Lopez described the Debtor as being desperate and depressed due to UHSC's payment demands.

During this time, Debtor's counsel contacted UHSC on three different occasions by either U.S. mail or facsimile to inform UHSC of the Discharge Order and to demand that UHSC cease all collection efforts.⁸ An individual at UHSC signed a certified mail return receipt for one of the notices sent by Debtor's counsel.⁹ On December 4, 2016, Debtor's counsel sent the last notice to UHSC. After the last notice, UHSC continued to send payment demands to the Debtor.

On April 19, 2017, Debtor's counsel filed a motion to reopen the Debtor's bankruptcy case to seek sanctions against UHSC for violating the Discharge Order.¹⁰ The Court reopened the case and the Debtor filed the Motion for Sanctions. The Debtor testified that he received the last demand letter from UHSC on April 21, 2017.

About a month later, the Debtor sold his home,¹¹ and moved to Puerto Rico to live with his cousin, Martha S. Comacho Byron ("Byron"). Byron testified that the Debtor told her he had a problem and had to sell his house. Byron believed that the Debtor sold the house because of the demand letters UHSC sent him. The Debtor testified that he sold his home because he couldn't "take it anymore" referring to his concerns about paying UHSC. The Debtor stated that UHSC stopped demanding payment after he moved to Puerto Rico, and that moving to Puerto Rico also helped with his concerns about UHSC.

By moving to Puerto Rico, the Debtor testified that he no longer receives Medicaid, does not have the same doctors, and cannot visit his sister on a regular basis. Lopez testified that at first the Debtor seemed happy moving to Puerto Rico, but now does not appear to like living there. The Debtor testified that he visits a doctor two or three times a year in Puerto Rico and pays \$14 for each visit. Before the Debtor moved to Puerto Rico, the Debtor did not have to pay for doctor visits.

In relation to the Motion for Sanctions, the Debtor testified that he needed to travel to Florida twice (including the trial), and based on his affidavit of costs,¹² the round-trip tickets were \$368.30 each. Byron testified that her roundtrip airline ticket to Florida for the trial cost \$354 and that it cost her a total of \$50 for travel to the airport, \$40 for travel to the courthouse and \$30 for meals. The Debtor also testified that he retained his counsel, Georgina Roman-Secor (“Roman-Secor”) to prosecute the Motion for Sanctions. Roman-Secor filed an affidavit of her time and costs in this matter.¹³ Roman-Secor spent a total of 16.47 hours at an hourly rate of \$250 in this matter for a total of \$4,117.50 in attorney fees. Roman-Secor incurred costs totaling \$584.25 that consists of filing fees, copies, medical record copies and translator services for the Debtor and witnesses at trial.

Discussion

Section 524 of the Bankruptcy Code embodies the “fresh start” concept by providing the debtor with a post-discharge injunction against collection of discharged debts.¹⁴ Under Section 524, a discharge “[o]perates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor”¹⁵ The discharge injunction is “intended to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it.”¹⁶ The Eleventh Circuit applies a two-prong test to determine whether the discharge injunction is violated.¹⁷ Under this test, the creditor is in contempt if the creditor: (i) knew that the discharge injunction was invoked and (ii) intended the actions which violated the discharge injunction.¹⁸ Having considered the evidence, the Court finds that that UHSC knew that the discharge injunction was invoked and intended to make the twenty-four communications that attempted to collect a discharged debt from the Debtor.

The question thus becomes how much, if any, damages the Debtor may recover. The Debtor asks the Court to award the Debtor actual damages consisting of the Debtor's travel expenses totaling \$736.60, Byron's travel expenses totaling \$474, the Debtor's medical expenses over the next ten years totaling \$280,¹⁹ the Debtor's emotional distress and anguish for an unspecified amount, the Debtor's attorney fees and costs totaling \$4,701.25, as well as punitive damages in an unspecified amount.

Although Section 524 does not explicitly authorize monetary relief for violations of the discharge injunction, a court may award damages pursuant to its inherent contempt powers.²⁰ Courts have inherent contempt powers to "achieve the orderly and expeditious disposition of cases."²¹ In addition, Section 105 of the Bankruptcy Code establishes the court's statutory contempt power.²² Under Section 105(a), "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."²³ Thus, Section 105 "grants courts independent statutory powers to award monetary and other forms of relief . . . to the extent such awards are 'necessary and appropriate' to carry out the provisions of the Bankruptcy Code."²⁴

The Court finds it appropriate to award travel expenses to the Debtor and Byron due to UHSC's failure to comply with the Discharge Order. The travel expenses are reasonable and necessary to prosecute the Motion for Sanctions. Accordingly, the Debtor is entitled to \$1,210.60 in actual damages for the Debtor's and Byron's travel expenses based on UHSC's failure to comply with the Discharge Order.

The Court finds it inappropriate to award the Debtor \$280 for future medical expenses. The Debtor argued at trial that UHSC collection efforts compelled the Debtor to move to Puerto Rico. And, because the Debtor now pays \$14 for doctor visits in Puerto Rico, the Debtor's actual damages should include his semiannual doctor visits for the next ten years. The Debtor's request for future medical expenses is too speculative. The Debtor is in his eighties and could decide to

leave Puerto Rico at any time. The Debtor's future medical expenses would not exist if the Debtor leaves Puerto Rico. Accordingly, awarding the Debtor \$280 for future medical expenses is not appropriate.

The Court does find it appropriate to award the Debtor damages for emotional distress and anguish due to UHSC's failure to comply with the Discharge Order. To award damages for emotional distress, the Debtor must "(1) suffer significant emotional distress, (2) clearly establish the significant emotional distress, and (3) demonstrate a causal connection between that significant emotional distress and the violation of the [discharge injunction]." ²⁵ Significant emotional distress is expected to occur if the conduct violating the discharge injunction is egregious or extreme. ²⁶ In the absence of an egregious or extreme conduct, the Debtor must provide medical or other corroborating evidence that shows "they suffered more than fleeting and inconsequential distress, embarrassment, humiliation, and annoyance." ²⁷

The Court finds that the Debtor suffered significant emotional distress based on UHSC's egregious and extreme actions. For two years, UHSC contacted the Debtor demanding payment despite having knowledge of the Debtor's bankruptcy filing, knowledge of the Discharge Order and having received repeated requests from Debtor's counsel to stop all collection efforts. And even if UHSC's conduct is not egregious or extreme, the Debtor provided medical records and the testimony of family members to demonstrate that the Debtor suffered more than a fleeting and inconsequential distress, embarrassment, humiliation, and annoyance. The Court recognizes that ordinarily a \$48 payment demand will not cause a debtor significant emotional distress. But, considering the Debtor's limited income, age and duration of the demands, this Court has no doubt that the Debtor suffered significant emotional distress from UHSC's payment demands.

Having considered the Debtor's testimony, the testimony of family members and the Debtor's medical records, the Debtor has clearly established that a significant emotional distress

occurred, and a causal connection exists between the Debtor's significant emotional distress and the monthly payment demands made by UHSC. Furthermore, UHSC has not defended the allegations or disputed the Debtor's claim of emotional distress. Accordingly, the Debtor is entitled to \$2,400 in actual damages for significant emotional distress based on UHSC's failure to comply with the Discharge Order.

The Court also finds it appropriate to award the Debtor attorney's fees and costs incurred due to UHSC's failure to comply with the Discharge Order. Roman-Secor appears before this Court regularly. This Court is familiar with Roman-Secor's experience, reputation, and ability. Having reviewed Roman-Secor's affidavit and considered the *Johnson* factors,²⁸ the Court finds attorney fees of \$4,117.50 and costs of \$584.25 reasonable and appropriate.

In addition to actual costs, the Debtor seeks punitive damages. An award of punitive damages is appropriate only in extreme circumstances and only if the violator acts "in an egregious, intentional manner."²⁹ Some courts award punitive damages only if they find: (i) actual knowledge of a violation or reckless disregard of a protected right; (ii) maliciousness or bad faith; or (iii) "an arrogant defiance of federal law."³⁰

Here, UHSC acted in an egregious and intentional manner in defiance of this Court's order. UHSC knew this Court entered the Discharge Order. Despite this knowledge, UHSC contacted the Debtor twenty-four times attempting to collect a discharged debt. UHSC even continued collections efforts after Debtor's counsel informed UHSC of the Discharge Order. UHSC stopped collection efforts only after the Debtor sought to reopen this case and seek sanctions against UHSC. UHSC failed to respond to the Motion for Sanctions or appear at trial despite receiving notice. UHSC's unresponsiveness and inactions demonstrate an arrogant defiance of bankruptcy law. The Court finds that UHSC's actions merit an award of punitive damages in the amount of \$10,000.

For the foregoing reasons, it is

ORDERED:

1. The Motion for Sanctions (Doc. No. 22) is granted.
2. University Health System, Carelink failed to comply with this Court's order and pursuant to this Court's inherent powers and Section 105 of the Bankruptcy Code, actual damages in the amount of \$8,312.35, and punitive damages in the amount of \$10,000 are awarded to the Debtor, Americo Lopez and against University Health System, Carelink for a total award of \$18,312.35 (the "Award")
3. University Health System, Carelink shall pay the Award within 60 days to Debtor's counsel, Georgina Roman-Secor, Law Office of Roman-Secor PA, 2290 South Volusia Avenue, Suite D, Orange City, FL 32763.
4. Debtor's counsel shall hold the Award in trust for the Debtor. Upon receipt of the Award, Debtor's counsel shall disburse the Award, less any unpaid attorney fees and costs (not to exceed \$4,117.50 for fees and \$584.25 for costs) to the Debtor.
5. This Court reserves jurisdiction to enforce this order.

Attorney Georgina Roman-Secor is directed to serve a copy of this order on interested parties and file a proof of service within three (3) days of entry of the order.

¹ Doc. No. 1, pgs. 23-24.

² Doc. No. 1, pg. 17.

³ Doc. No. 5, Doc. No. 6.

⁴ Ex. Nos. 7, 8.

⁵ Ex. No. 3, pg. 2.

⁶ Ex. No. 3, pgs. 3-18

⁷ Ex. No. 1.

⁸ Ex. No. 2.

⁹ Ex. No. 2, pg. 3.

¹⁰ Doc. No. 17.

¹¹ Ex. No. 10.

¹² Ex. No. 6.

¹³ Doc. No. 36.

¹⁴ *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1388-89 (11th Cir. 1996).

¹⁵ 11 U.S.C. § 524 (2010).

¹⁶ *Walton v. Clark & Washington, P.C.*, 454 B.R. 537, 545 (Bankr. M.D. Fla. 2011).

¹⁷ *See Hardy*, 97 F.3d at 1390.

¹⁸ *Id.* (citing *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1555 (11th Cir. 1996)).

¹⁹ This amount is determined by assuming the Debtor will visit a doctor twice a year for the next ten years at \$14 a visit.

²⁰ *See Hardy*, 97 F.3d at 1389 (internal citation omitted).

²¹ *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1553 (11th Cir. 1996) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 2132 (1991)).

²² *Hardy*, 97 F.3d at 1389.

²³ 11 U.S.C. § 105(a) (2010).

²⁴ *See Hardy*, 97 F.3d at 1389-90 (citing *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1553-54 (11th Cir. 1996)).

²⁵ *In re McLean*, 794 F.3d 1313, 1325-26 (11th Cir. 2015)(alteration in original).

²⁶ *See In re Smith*, 2012 WL 1077840, *5 (Bankr. M.D. Fla. 2012).

²⁷ *In re Beback*, 2013 WL 5156706, at *3 (Bankr. M.D. Fla. 2013).

²⁸ To determine the reasonableness of attorney fees and costs, courts examine the factors stated by the Fifth Circuit Court of Appeals in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and the length of the professional relationship with the client; (12) awards in similar cases. *Johnson*, 488 F.2d at 717.

²⁹ *See Beback*, at *3.

³⁰ *Nibbelink v. Wells Fargo Bank, N.A. (In re Nibbelink)*, 403 B.R. 113, 121 (Bankr. M.D. Fla. 2009).