

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

In re:

PHILIP A. HICKS,

Case No. 6:09-bk-00540-ABB

Chapter 13

Debtor.

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ORDER

This matter came before the Court on the Motion to Enforce Automatic Stay and for Turnover of Property of the Estate and Sanctions (Doc. No. 38) filed by the Debtor Philip A. Hicks (“Debtor”) against Kendall Burnup (“Burnup”) and C. Nick Asma, Esquire (“Asma”) (collectively, the “Respondents”) regarding the Debtor’s apartment building located at 3706 Walker Road, Apopka, Florida 32703 (the “Property”).

An Order was entered on July 2, 2009 (Doc. No. 80) finding the Property and the rents from the Property constituted property of the estate on the petition date of January 16, 2009. The Court found:

Asma and Burnup received actual notice of the Debtor’s bankruptcy case on or about January 24, 2009 pursuant to the Suggestion of Bankruptcy mailed to Asma by Debtor’s counsel and the Notice issued by the Bankruptcy Court. Any automatic stay violation committed by Asma or Burnup after they received notice of the Debtor’s bankruptcy case constitutes a willful violation of the automatic stay warranting the imposition of sanctions.

July 2, 2009 Order at p. 10.

The Court reserved ruling on the issue of whether Burnup and/or Asma committed a continuing violation of the automatic stay warranting the imposition of sanctions pursuant to 11 U.S.C. Section 362(k). The Court directed the Respondents, among other things, to turn over to the Chapter 13 Trustee all rents received from the

Property and to file a detailed accounting of all monies received from the Property's tenants.

The Respondents filed a copy of a handwritten ledger (Doc. No. 86) reflecting they collected total rental payments of \$8,542.00 from the Property during the period December 20, 2008 through July 5, 2009. The ledger delineates twenty-seven payments received. It reflects a rental payment of \$300.00 paid by check was returned for insufficient funds. The Respondents turned over \$8,242.00 to the Chapter 13 Trustee.

The Respondents collected rent totaling \$7,417.00 through twenty-four rental payments after they had received actual notice of the Debtor's bankruptcy filing. Their collection of the check for \$300.00 constitutes an act to collect rent regardless of the return of the check for insufficient funds.

The Respondents committed ongoing willful violations of the automatic stay by collecting rents from the Property after January 24, 2009. Each collection of rent constitutes a separate violation of the stay. They knew as of January 24, 2009 the automatic stay of 11 U.S.C. Section 362(a) was invoked and they intended the actions which violated the stay. Jove Eng'g, Inc. v. I.R.S., 92 F.3d 1539, 1555 (11th Cir. 1996). They committed twenty-four separate willful stay violations. Id.

The Debtor has suffered damages as a direct result of the Respondents' willful violations of the stay. Such violations have negatively impacted the Debtor's ability to meet his Chapter 13 obligations and fund his Plan. Sanctions are due to be imposed against the Respondents for their willful ongoing violations of the stay. Id.; Matter of Maas, 69 B.R. 245, 247 (Bankr. M.D. Fla. 1986).

The Debtor's actual damages include: (i) the rents collected by the Respondents after January 24, 2009; (ii) emotional distress, aggravation, and inconvenience; and (iii) attorney's fees and costs.

The Respondents wrongfully collected rents of \$7,417.00 constituting property of the estate and which monies were to fund the Debtor's Plan. The Debtor is entitled to a damages award of \$7,417.00 for the wrongfully collected rents.

Emotional distress constitutes actual damages and is expected to occur where the conduct is egregious or extreme. In re Nibbelink, 403 B.R. 113, 120-21 (Bankr. M.D. Fla. 2009). Significant emotional distress is readily apparent where the conduct is egregious and corroborating medical evidence is not required. Dawson v. Washington Mut. Bank, F.A. (In re Dawson), 390 F.3d 1139, 1150 (9th Cir. 2004). Entitlement to emotional distress damages exists "even in the absence of an egregious violation, if the individual in fact suffered significant emotional harm and the circumstances surrounding the violation make it obvious that a reasonable person would suffer significant emotional harm." Id. at 1151.

The Debtor's emotional distress, aggravation, and inconvenience are readily apparent due to the Respondents' intentional and egregious conduct. The Debtor is not required to present corroborating medical evidence. In re Nibbelink, 403 B.R. at 120; In re Dawson, 390 F.3d at 1150-51. He is entitled to a damages award of \$1,000.00 for his significant emotional distress, aggravation, and inconvenience.

The Debtor has incurred attorney's fees and costs as actual damages resulting from the Respondents' willful violations of the stay. Richard R. Baker of Richard R.

Baker, P.L. (“Baker”) filed a Statement (Doc. No. 83) setting forth he incurred mailing costs of \$23.08 and fees of \$5,375.00 consisting of 21.5 hours billed at the hourly rate of \$250.00. A total fee award of \$1,500.00 for six hours of attorney time billed at the rate of \$250.00 per hour is reasonable pursuant to the reasonableness criteria of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-718 (5th Cir. 1974). Baker’s costs of \$23.08 are reasonable. Id.

The Debtor has suffered total actual damages of \$9,940.08 as a direct result of the Respondents’ willful violations of the stay. He is entitled to an award of actual damages of \$9,940.08 against the Respondents, jointly and severally, pursuant to 11 U.S.C. Section 362(k).

The Respondents’ actions warrant the imposition of punitive damages. They willfully violated the automatic stay twenty-four times. They continued to violate the automatic stay even while the Motion for Sanctions was pending. An award of punitive damages of \$1,000.00 is warranted pursuant to 11 U.S.C. Section 362(k).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Respondents willfully violated the automatic stay of 11 U.S.C. Section 362(a) and damages of \$10,940.08, consisting of actual damages of \$9,940.08 and punitive damages of \$1,000.00, are hereby imposed in favor of the Debtor and against the Respondents, jointly and severally, pursuant to 11 U.S.C. Section 362(k); 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): (i) Debtor’s counsel

Richard R. Baker in the amount of \$1,523.08; and (ii) the Debtor in the amount of \$9,417.00; and it is further

ORDERED, ADJUDGED and DECREED that the Respondents have satisfied a portion of the actual damages award in the amount of \$7,417.00 through their turnover of rents to the Chapter 13 Trustee; 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.

Dated this 13th day of August, 2009.

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