

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

In re:

Case No.: 6:08-bk-00619-ABB
Chapter 7

ANN MAUREEN BROOKS,

Debtor.

ORDER

This matter came before the Court on the Motion for Sanctions (Doc. No. 14) filed by Ann Maureen Brooks, the Debtor herein (“Debtor”), seeking an award of sanctions against Orlando Regional Healthcare (“ORH”) for violation of the automatic stay. An evidentiary hearing was held on July 14, 2008 at which the Debtor and her counsel appeared. No response to the Motion for Sanctions was filed.

The Debtor filed this bankruptcy case on January 29, 2008. 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 ORH as a general unsecured creditor in Schedule F for \$439.95 relating to pre-petition medical services (Doc. No. 1).

Notice of the Debtor’s bankruptcy filing was issued to ORH on February 7, 2008 pursuant

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.

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. ORH at no time sought relief from the automatic stay.

ORH sent a billing statement to the Debtor post-petition on April 6, 2008 attempting to collect its prepetition debt. Debtor’s counsel advised ORH by letter dated April 21, 2008 the Debtor had filed for bankruptcy and included a copy of the Notice. ORH did not respond to counsel’s letter. Counsel’s attempts to reach ORH by telephone were unsuccessful. ORH continued to send billing statements to the Debtor attempting to collect its debt on May 6, 2008, June 5, 2008, and July 7, 2008.

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).

ORH’s actions were knowing and intentional. ORH’s post-petition billing statements were attempts to collect the pre-petition debt. It sent the statements knowing the Debtor had filed for bankruptcy and the automatic stay was in effect. Each post-petition statement constitutes a violation of 11 U.S.C. 362(a). ORH intended the actions which

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

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.

The Debtor suffered actual damages, including attorney's fees and costs, as a result of ORH'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 \$750.00 for attorney's fees incurred and punitive damages of \$500.00 pursuant to 11 U.S.C. Section 362(k).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that ORH 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. 14) 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 ORH: (i) Debtor's counsel Lori Patton in the amount of \$750.00; and (ii) Debtor Ann Maureen Brooks in the amount of \$500.00, with such amounts to be paid by ORH forthwith; and it is further

ORDERED, ADJUDGED and DECREED that ORH 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 and a hearing shall be held on August 18, 2008 at 10:30 a.m. to address ORH's compliance with this Order.

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

Dated this 29th day of July, 2008.

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