

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 01-10831-MWV
Chapter 7

Cheryl A. Brigham,

Debtor

Dennis G. Bezanson, Esq.
Attorney for Debtor

MEMORANDUM OPINION

The Court has before it the motion of Cheryl A. Brigham (“Debtor”), in which she seeks sanctions against Brigham and Women’s Hospital (“Hospital”) for willful violation of the automatic stay under 11 U.S.C. § 362(a) and for violation of her discharge under 11 U.S.C. § 524(a)(2). Hospital did not answer or appear at a hearing held on November 13, 2001. The record indicates that Hospital was served with the motion and the notice of the November 13, 2001 hearing at the following addresses:

Brigham and Women’s Hospital
PO Box 9693
Boston, MA 02114-9693

Brigham and Women’s Hospital
PO Box 3320
Boston, MA 02241-3320

Brigham and Women’s Hospital
PO Box 9693
Charlestown, MA 02114-9693

Based on the Debtor’s testimony and the documentary evidence presented, the Court determined that Hospital’s conduct constituted a willful violation of the automatic stay. The Court took the matter under advisement to determine the appropriate amount of sanctions to be awarded.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

The Debtor filed a voluntary petition under Chapter 7 on March 20, 2001. The Debtor added Hospital as a creditor and sent notice of her bankruptcy to Hospital, pursuant to an amendment of the Debtor’s schedules filed June 20, 2001. On July 23, 2001, Hospital sent the Debtor the first of three post-petition statements for services rendered. Debtor’s counsel notified Hospital, by a letter dated August 2, 2001, that it was in violation of the automatic stay and that it should cease further collection efforts. On August 23, 2001, Hospital sent the Debtor a collection notice for services rendered. In response, a staff member of Debtor’s counsel telephoned Hospital. The Court issued the Debtor’s discharge on September 18, 2001 and closed her case on September 27, 2001. On September 24, 2001, Hospital sent the ailing Debtor another collection notice.

Section 362(h) provides that “[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(h) (emphasis added). The First Circuit has held that a violation is willful if there is knowledge of the stay and the party intends the actions which constitute the violation. See Fleet Mortgage Group v. Kaneb, 196 F.3d 265, 269 (1st Cir. 1999). The stay violations at issue were unquestionably “willful” within the meaning of section 362(h), and the Court so

found on the day of the hearing. The only issue remaining is the amount of damages to which the Debtor is entitled for Hospital's willful violations.

The only testimony as to actual damages was that of the Debtor. The essence of her testimony is that she suffers from chronic obstructive pulmonary disease and that her lung capacity is only twenty-two percent. Throughout the hearing, she was in fact taking oxygen. She further testified that unless she gets a lung transplant, her life expectancy is short. Her reason for going to Hospital was to take tests that would qualify her for a transplant. For whatever reason, the process was never completed at Brigham and Women's.

It is also Debtor's testimony that when she gets excited, it is harder for her to breathe, and each time she received a collection letter from Hospital, she became excited and immediately contacted her attorney. At the trial, these emotional and physical damages were not quantified in a dollar amount. Counsel for the Debtor did argue that this case called for \$10,000 in punitive damages due to Hospital's disregard not only of the automatic stay, but the motion for sanctions as well.

In the First Circuit, emotional damages qualify as actual damages. Fleet Mortgage Group v. Kaneb, 196 F.3d at 269. Debtor's testimony as to physical and emotional distress is specific and revolves around receipt of the three collection letters from Hospital. Therefore, the Court awards the Debtor the sum of \$2,500 for her physical and emotional distress. Further, counsel for the Debtor has filed an affidavit of attorney's fees and costs seeking \$1,700 in legal fees and \$161.60 in costs. The Court has reviewed these fees and costs and finds them reasonable. As directed by section 362(h), the Debtor is awarded \$1,700 in legal fees and \$161.60 in costs.

As mentioned above, Debtor's counsel urges this Court to award punitive damages in the amount of \$10,000. The Court believes that this figure is excessive, but that punitive damages are warranted for Hospital's total disregard of the automatic stay and even of this motion. The award of punitive damages is for the purpose of deterring Hospital from similar conduct in the future and also as a penalty for its

actions in the present case. Accordingly, this Court awards the Debtor the sum of \$2,500 in punitive damages.

CONCLUSION

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 17th day of December, 2001, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge