

Putting Some Teeth into the Automatic Stay Violation

One of the most important benefits of filing for bankruptcy protection is the enforcement of the Automatic Stay, found in 11 USC § 362(A). The Automatic Stay is so important that the provision against multiple and frequent filings does not always apply to this provision, *see In Re Bateman*, 341 B.R. 540 (Bankr. D. Md., 2006) where the Debtor actually filed a bankruptcy case for the protections of the automatic stay and not to discharge any unsecured debt. What this legal term (“Automatic Stay”) means in plain and simple English is that, once a Debtor files for bankruptcy, no Creditor can continue to attempt to collect an old debt by contacting the Debtor, or by taking possession of anything that the Debtor owns. In fact, the Automatic Stay will even cancel any court hearings and stop a foreclosure of the Debtor’s property. I believe the Fifth Circuit articulated the purpose of the stay the best when it stated, “For the debtor, it provides a breathing spell by stopping all collection efforts, all harassment, and all foreclosure actions... the stay also serves the interest of creditors, insofar as it eliminates the impetus for a race of diligence by fast-acting creditors.” *SEC v. First Financial Group*, 645 F.2d 429, 439 (5th Cir.1981).

In Massachusetts, Maryland, and many other states, the Bankruptcy Court has been sharpening its teeth relative to violations of the Automatic Stay. It is undisputed law in every state of the union that, should a Creditor such as a credit card company, lender, or anyone else owed money by the Debtor violate the Automatic Stay, the Court is authorized to compensate that Debtor for any actual damages. The Court may also sanction the offending party to prevent future violations.

Notwithstanding the fact that these protections are well founded under Federal law, Creditors routinely violate the Automatic Stay. There are ways to stop this incursion, such as sending demand letters to stop contacting the Debtor, or even just making a phone call. However, if the violating conduct does not cease and desist, a Debtor can petition the Bankruptcy Court to fine the Creditor, and even provide emotional distress damages to the Debtor. If, for example, the violation has caused significant emotional harm and the Debtor can show corroborating medical evidence or can present non-experts, such friends, family, or coworkers, to testify to “manifestations of mental anguish,” the Debtor may recover significant awards. *In re Rosa*, 313 B.R. 1 (Bankr. D. Mass. 2004).

In some cases the violation of the Automatic Stay is much more egregious than simply continuing to contact the Debtor after a bankruptcy petition is filed. There have been instances where a Creditor has taken possession of real or personal property of the Debtor. For example, if a Debtor had a vehicle or boat repossessed after a case was filed or, even worse, if a home was foreclosed upon, the violating Creditor is responsible for paying actual damages as well.

An individual injured by any willful violation of the Automatic Stay shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances, may recover punitive damages. *McMullen v. Sevigny* 386 F.3d 320, 330 (2004) citing 11 USC §.362 (h). A violation will be found "willful" if the Creditor's conduct was intentional (as distinguished from inadvertent), and committed with knowledge of the pendency of the bankruptcy case. *See Fleet Mortgage Group, Inc. v. Kaneb*, 196 F.3d 265, 268-69 (1st Cir. 1999). Even if the Creditor claims that its violation was unintentional, a Creditor that commits a technical violation of the

Automatic Stay, due to lack of notice, has an affirmative duty to remedy the violation as soon as practicable after acquiring actual notice of the stay. See *In re Will*, 303 B.R. 357 (Bankr. N.D. Ill. 2003).

The bottom line in all of this is that the Automatic Stay is a very powerful law put in place to protect the Debtor, and if you believe you have been a victim of a violation of this law, you need to speak to your bankruptcy attorney right away. If you do not have one, this is not the time to go it alone.

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