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In re: Michael Williams  
Lori L. Williams  
Case No. 03-64481

### **LETTER DECISION and ORDER**

The Debtor Michael Williams (“M. Williams”) filed a motion herein pursuant to § 362(h) of the U.S. Bankruptcy Code, 11 U.S.C. §§ 101-1330 (“Code”) seeking a determination that certain post-petition collection activity engaged in by Verizon Wireless (“Verizon”) constituted a willful violation of the automatic stay imposed by Code § 362(a). M. Williams seeks actual and punitive damages as well as attorney’s fees.

Debtor’s motion was filed with this Court on October 27, 2003, and an Amended Notice of Motion was filed on October 31, 2003. It appears that the Amended Notice of Motion was served on Verizon by first class mail on October 30, 2003. *See* Affirmation of Service of Mark A. Wolber, Esq. (“Wolber”) dated October 31, 2003. The address utilized for service on Verizon was P.O. Box 17120, Tuscon, AZ 85731-17120. The motion was made returnable before the Court on December 23, 2003.<sup>1</sup>

On the return date of the motion, there was neither opposition nor appearance by Verizon and at that time, the Court granted M. Williams’ motion to the extent of finding that Verizon had willfully violated the automatic stay based on the uncontested allegations contained in the motion

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<sup>1</sup> The motion was captioned only in M. Williams’ name even though both M. Williams and Lori L. Williams (“L. Williams”) filed a joint Chapter 7 petition on June 30, 2003.

papers and the oral argument of Wolber. Because, however, the motion papers did not quantify the amount of damages and the fact that punitive damages were sought, the Court scheduled an inquest to determine the amount of damages.

An inquest hearing was held before the Court on March 4, 2004, at which M. Williams and the co-Debtor L. Williams appeared and testified under oath. Following the close of the testimony, the Court requested that Wolber submit an affidavit of service in connection with this contested matter, which the Court would consider in determining the amount of attorney's fees to be awarded. At the hearing, L. Williams testified that subsequent to the filing of their joint bankruptcy petition in June of 2003, she received some 20 telephone calls from Verizon demanding payment of the outstanding pre-petition bills. She further testified that when she inquired as to why Verizon was attempting to collect a pre-petition debt, she was advised that it was Verizon's policy to do so. L. Williams testified that she dealt with Verizon, even though the account was in her husband's name, because she customarily paid the bills and M. Williams was severely depressed at that time. She testified that she also suffered extreme anxiety as a result of her having to deal with Verizon. Finally, L. Williams identified two post-petition bills addressed to M. Williams received from Verizon, in December of 2003 and January of 2004, as well as two notices from Allied Interstate, a collection agency acting on behalf of Verizon, dated January 22, 2004 and February 20, 2004, respectively. It appears that Verizon actively continued its collection efforts even after it had been served with the Debtor's Code § 362(h) motion.

M. Williams verified all of L. Williams' testimony and further indicated that he and L. Williams were having marital problems pre-petition that were exacerbated post-petition by the actions of Verizon. He testified that he was currently under the care of a psychiatrist though he acknowledged that his psychiatric care was not due solely to Verizon's activities.

This Court has previously ruled in connection with a willful violation of the stay under Code § 362(h), that “actual damages for emotional distress may nonetheless be granted where other corroborating evidence is presented or the circumstances of the stay violation are so egregious that they obviously merit emotional distress damages.” *See In re Ficarra*, Case No. 00-62714, slip op. at 14 (Bankr. N.D.N.Y. April 17, 2000). Here, while the Debtors provided no actual medical testimony, the egregiousness of the stay violation is obvious. Verizon has apparently chosen to completely ignore the automatic stay statutorily imposed upon the filing of M. Williams’ and L. Williams’ bankruptcy case and has proceeded to attempt to collect a pre-petition debt even after being served with this motion. Such conduct cannot be tolerated. Debtors should be entitled to the protection of the automatic stay until such time as it is modified, lifted or terminated by operation of law. They should not be harassed by large institutional creditors relying on some ill-conceived notion that they are above the law.

Accordingly, this Court will award M. Williams actual damages in the sum of \$10,000. In addition, the Court will award Wolber attorney’s fees in the sum of \$1,400. With regard to an award of punitive damages, the Court is reminded that such damages are available where there is “an additional finding of maliciousness or bad faith on the part of the offending creditor.....” *Crysen/Montenay Energy Co. v. Esselen Assoc., Inc. (In re Crysen/Montenay Energy Co.)*, 902 F.2d 1098, 1105 (2d. Cir. 1990). Here, while Verizon has displayed an air of indifference to the statutory stay imposed by Code § 362(a), this Court cannot conclude that its conduct rises to the level of maliciousness or bad faith. Thus, the Court declines to award punitive damages.<sup>2</sup>

IT IS SO ORDERED

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<sup>2</sup> The Court does not believe that the damages awarded herein should be diminished in any way because much of the post-petition harassment was indirectly experienced by M. Williams.

Dated at Utica, New York

this      day of      2004

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge