JOHN MC KEOWN, ESQ.
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Re: Patricia A. Fields
Case No. 03-65474 Chapter 7

LETTER DECISION and ORDER

The Debtor, Patricia A. Fields, a/k/a Trisha Ann Fields ("Fields" or"Debtor"), filed a motion herein pursuant to § 362(h) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 ("Code"), seeking a determination that post petition collection activity engaged in by Shapiro, Baines and Associates ("Shapiro") constituted a willful violation of the automatic stay imposed pursuant to Code § 362(a).

Debtor's motion was filed with the Court on September 27, 2004, and was previously served on Shapiro and Michael Balanoff, Esq., the Chapter 7 Trustee in this case, on September 22, 2004. *See* Affidavit of Service of John F. McKeown, Esq. ("McKeown"), sworn to on September 22, 2004. The motion was made returnable before this Court on November 2, 2004.

On the return date of the motion, there was neither timely opposition nor an appearance by Shapiro, and the Court orally granted Fields' motion to the extent of finding that Shapiro had willfully violated the automatic stay based upon the uncontested allegations contained in the motion papers and the oral presentation of McKeown, Debtor's current attorney.[1] *See Crysen/*

[1]At the time of filing her chapter 7 bankruptcy petition, Fields was represented by Richard Gunger, Esq. A consent to substitute McKeown as her attorney was filed with the Court on

Montenay Energy Co. v. Esselen Assoc., Inc.(*In re Crysen/Montenay Energy Co.*) 902 F.2d 1098 (2dCir.1990). Because the motion sought actual and punitive damages, the Court scheduled an inquest to determine the amount of damages to award.

At the hearing, Debtor testified that after she filed her chapter 7 bankruptcy petition on August 8, 2003, in which she listed ATT Universal Card ("ATT") as a creditor on account 5398439000674019,[2] she began to receive phone calls from Shapiro representatives on behalf of ATT. There were a number of calls and each time Debtor was assured that because she had filed bankruptcy all collection activity would cease. Debtor's prior attorney also wrote letters to Shapiro advising it of the pending bankruptcy. *See* Debtor's Exhibits 1, 2,and 3. Debtor's prior attorney advised her that it would take approximately six months to clear the matter up. In the interim, the Debtor began to receive written notices from Shapiro. *See* Debtor's Exhibits 7 and 8. She did not recall the timing of the first few notices, and she did not retain the postmarked envelopes because her attorney had advised her that it would take about six months to resolve the matter. She continued to call Shapiro and was continually advised that the matter would be taken care of. Finally, on or about May 6, 2004, Debtor received a notice that indicated that the "Final Grace Period Expired." The notice also advised, "we have located your place of employment, bank accounts and property." The notice went on to indicate that "on Monday May 17th, 2004 7:30 AM, We will initiate 'INVOLUNTARY MONEY RECOVERY PROCEEDINGS.' You are advised to GOVERN YOURSELF accordingly." The notice required payment of $8,644.18 and

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August 30, 2004.

[2]The notices the Debtor received from Shapiro identified the "Original Creditor" as Citibank Universal Card Services with the identical account number.

notified the Debtor that if a judgment was obtained against her, it would result in among other things "attachment of bank accounts." *See* Debtor's Exhibit 6. Upon receipt of Exhibit 6, Debtor again called Shapiro and was told that if she would pay the principal amount of the debt approximately $4,500, the interest portion would be forgiven and the matter would be taken care of. It was also at this point that Debtor contacted McKeown.

Debtor testified that she became very concerned when she believed that Shapiro would attach her bank accounts because the accounts were jointly held with her mother. Her mother's pension and Social Security checks were directly deposited into the accounts, as was Debtor's pay check. As a result, Debtor contacted her boss, the local Social Security office and her bank seeking advice on how the direct deposits could be stopped before the attachment occurred. In the process, she was required to disclose to those various parties that she had filed bankruptcy and the reasons for her inquiry. Debtor's co-workers, as well as her landlord, also became aware of her predicament, the latter having been told directly by the Debtor because of concerns that she might not be able to make her rent payment on time. Debtor also testified that her mother became quite upset at the prospect of having her pension and Social Security checks seized. Debtor also called her mother, Jean M. Fields, as a witness. Debtor's mother testified to the same effect.

On or about the May 17th date, the Debtor discharged her then attorney and retained McKeown. Debtor testified that after retaining McKeown all of the harassment stopped and no monies were ever actually removed from her bank accounts by Shapiro. Debtor did not seek any medical help as a result of her experience, and she testified that she was not being treated at the time of these incidents for any emotional disorders.

This Court has previously ruled in connection with a willful violation of the automatic stay under Code § 362(h) that "actual damages for emotional distress may nonetheless be awarded 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). In this case, while the Debtor acknowledged that she did not seek any professional help and that she did not suffer from any emotional disorder as a result of the creditor's conduct, she obviously suffered the harassment and public humiliation that Congress clearly had in mind when it added § 362(h) to the Bankruptcy Code. She testified that after receiving the initial post petition collection notices from Shapiro, she both called Shapiro's office and referred the matter to her then attorney. Each time she spoke with Shapiro's office she was assured that the matter would be taken care of and the collection activity would cease. On each occasion, however, the collection notices continued. Her prior attorney advised her that notwithstanding his "cease and desist" letters it would take a number of months before she could expect to see the collection activity come to an end. In fact, it never ended until Debtor retained McKeown and he filed the instant motion.

Shapiro's blatant and systematic violation of the automatic stay warrants the imposition of actual damages notwithstanding the lack of proof of physical injury or corroborating medical testimony or significant economic loss. *See Fleet Mortgage Group, Inc. v. Kaneb* (*In re Kaneb*), 196 F.3d 265,270 (1st Cir. 1999) and *In re Bishop,* 296 B.R.890,895 (Bankr. S.D. Ga.2003). The mental anguish, emotional distress and public humiliation that the Debtor was subjected to by Shapiro's actions must be compensated. Accordingly, the Court awards the Debtor actual damages of $20,000 together with attorney's fees payable to McKeown in the sum of $2,667 and

expenses in the sum of $158.65.

With respect to the Debtor's request for punitive damages, the evidence does not rise to the level of malicious and callous disregard for the rights of the Debtor. *Id*. at 898, citing *Crysen/Montenay Energy Co*, 902 F.2d at 1105. While taking exception to what it considers Shapiro's total disregard for the lawful processes of this Court in failing to defend or explain its actions, the Court concludes that there is no basis for awarding punitive damages under these circumstances.

IT IS SO ORDERED

Dated at Utica, New York

this 2nd day of February 2005

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge