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Re: Jesse Len Jones
Case No. 04-65041
Adv. Pro. No. 05-80247
Jesse Len Jones vs. Hartford Fire Insurance Company

LETTER-DECISION AND ORDER

On April 19, 2006, the Court conducted an inquest in order to consider the amount of damages to be awarded to the Plaintiff/Debtor, Jesse Len Jones ("Plaintiff" or "Debtor"), as the result of a willful violation of the automatic stay imposed pursuant to § 362(a) of the Bankruptcy Code (11 U.S.C. §§ 101-1330)("Code") and/or a willful violation of the discharge injunction imposed pursuant to Code § 524(a)(2) and (3).[1]

FACTS

The Debtor, prior to July of 2003, owned and operated a convenience store. In July 2003, the store was destroyed by fire. Following the fire loss, for which the Debtor had insurance

[1] On March 6, 2006, the Court entered an Order by default in the within Adversary Proceeding against the Defendant, Hartford Fire Insurance Company ("Hartford") based upon the allegations in the Debtor's complaint that the Hartford had wilfully violated both the automatic stay and the discharge injunction, and asking the Court to award both compensatory and punitive damages to the Debtor. In order to determine the amount of damages, the Court scheduled an inquest for April 19, 2006.

coverage, she attempted to re-start the business but she was unable to keep up with mounting bills and, finally, in July of 2004, approximately a year after the fire, she found it necessary to file a petition pursuant to Chapter 7 of the Code.[2] Listed among Debtor's unsecured creditors was the Hartford, the nature of the debt being identified as a "subrogation claim o/b/o Schmitt Sales Inc.," and the amount as $10,700. Schmitt Sales Inc. had owned certain equipment located within the Debtor's store which had been destroyed by the fire. Hartford had insured the equipment.

The Debtor testified at the inquest that within two weeks after the bankruptcy had been filed she began to receive phone calls and correspondence from Hartford indicating that she was the proximate cause of the fire and advising her that Hartford was looking to her for reimbursement of the damages incurred by their insured in the amount of $19,180. (*See* Plaintiff's Exhibit 1, Letter from Hartford to the Debtor dated 10/13/04). She continued to receive written notices or calls from Hartford on a weekly basis. (*See* Plaintiff's Exhibits 2-8.) Each of the notices continued to demand that the Debtor pay Hartford the same amount of money: $19,180. In January of 2005, the Debtor received correspondence from a collection agency on behalf of Hartford demanding payment of the same $19,180. (*See* Plaintiff's Exhibit 9.) Debtor also experienced numerous phone calls from unknown persons demanding payment of the Hartford claim. During these calls she was accused of starting the fire.

Debtor testified that as result of these letters and phone calls, she felt threatened and she became very anxious to the point that she sought medical help from her family physician. She

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[2] Debtor testified that her own insurance company had delayed paying the policy proceeds to her because of an investigation into the allegedly suspicious nature of the fire. However, it was determined ultimately that the fire was caused by a recently installed faulty exhaust fan and the investigation came to an end.

indicated that, though she had a caller ID feature on her home telephone, the calls from Hartford or its agents were "blocked" calls and not capable of being identified. She became reluctant to answer the phone or the door. She would not leave her home. She indicated that following the bankruptcy she had initially intended to return to her nursing career, which she had interrupted when she purchased the convenience store. However, with the onset of the letters and phone calls she began to experience anxiety attacks with increasing frequency and began to withdraw from all social contacts with family and friends. At one point, she was taking medication prescribed by her physician for her anxiety at least 3 times a day. The Debtor offered her relevant medical records into evidence pursuant to Federal Rule of Evidence 902. These records appear to support the Debtor's description of her condition. During a visit to her physician's office on February 25, 2005, the medical record indicates that, "The patient has significant anxiety and panic attacks since the business burned down. She was poorly compensated by the insurance company and she is bothered by debtors (sic). She is getting significant relief with xanax, but she is taking it only as needed basis. Advised to continue with xanax on regular basis and see if it is more effective ."

Debtor's husband, Randall Rouse ("Rouse"), also testified. He verified his wife's extreme anxiety and her withdrawn nature. He also indicated that in November of 2004, he and the Debtor went to see their attorney, David Goldbas, Esq., and asked him to contact Hartford. He testified that in their presence, Attorney Goldbas called Hartford and advised them that his wife had filed bankruptcy and that they were to cease all collection activity. Rouse indicated that, notwithstanding that phone call, the Debtor received at least 6 more collection notices from Hartford. Rouse acknowledged that he and his wife had paid Attorney Goldbas a retainer of $800 in November 2004, to handle the Hartford matter, and it was their understanding that Goldbas would bill them against

the retainer at the rate of $150 per hour. In response to questioning by the Court, Rouse indicated that the last contact that his wife had received from Hartford regarding the claim was in February 2006.

DISCUSSION

Code § 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). Additionally, Code§ 524(a), "operates as an injunction against the commencement or continuation of an action. . . . . to collect , recover or offset any such [previously discharged] debt as a personal liability of the debtor."[3] While Code § 524(a) does not contain a specific provision mandating an award of damages for its violation, courts have generally relied on their inherent contempt power, as well as Code § 105(a), to award monetary damages where a violation of the discharge injunction is found. *See Matter of Arnold,* 206 B.R. 560, 567 (Bankr. N.D. Ala. 1997). In the contested matter, sub judice, it appears that Hartford's persistent course of attempted debt collection ran afoul of both Code § 362(h), as well as Code § 524(a), since the testimony of the Debtor and her spouse indicated that the "dunning" letters and phone calls began almost immediately after she filed her Chapter 7 case and continued up through early 2006, more than a year after the Debtor received her discharge. The Court also notes that the collection activity continued long after Debtor's attorney

[3] The electronic docket of this case indicates that the Debtor received a discharge on October 18, 2004.

telephonically contacted Hartford and advised it to cease and desist from such activity.

This Court has had occasion to consider a number of contested matters in which a creditor ran afoul of Code § 362(h) or Code § 524(a). Once the willfulness of the violation is established, the Court mus t turn its attention to the issue of damages, both actual and punitive. This Court has noted that an award of actual damages is available even in the absence of medical testimony. *See In re Ficarra*, Case No. 00-62714, slip op. at 14 (Bankr. N.D.N.Y. April 17, 2000); *In re Williams*, Case No. 03-64481, slip op. at 3 (Bankr. N.D.N.Y. April 19, 2004). Here, however, the Debtor has introduced medical records produced by her treating physician that substantiate her testimony concerning anxiety and mental anguish directly caused by the actions of Hartford. In the Court's opinion, these actions displayed a callous disregard for either the automatic stay or the discharge injunction. As this Court noted in *Williams*, a debtor" should not be harassed by large institutional creditors relying on some ill-conceived notion that they are above the law." *Id*.

Hartford's actions, as described by the Debtor and her husband, were particularly egregious because they were not only designed to harass the Debtor to the point of having her repay an otherwise discharged debt, but they falsely accused her of being responsible for the fire which destroyed her business. Though a nurse by profession, Debtor testified that the anxiety and guilt caused directly by Hartford's conduct delayed her return to that career following the loss of her convenience store business.

Considering all of the proof presented by the Debtor at the inquest, this Court will award her the sum of $15,000 in actual damages. In addition upon a review of the time records submitted by Attorney Goldbas, the Court will award an attorney's fee of $3,150 in addition to disbursements of

$374.88.[4]

Turning to an award of punitive damages, the Court notes that the standard to be applied is one of maliciousness and/or bad faith. As this Court has noted previously, an award of punitive damages is intended "to punish a person for his outrageous conduct and to deter him and others like him from similar conduct in the future." *In re Klein* , 226 B.R. 542, 547 (Bankr. D.N.J. 1998). While the conduct of Hartford in willfully violating both the automatic stay and the discharge injunction was both callous and indifferent to the rights of the Debtor, as well as arguably libelous, it does not, in the Court's opinion, rise to the level of "maliciousness" or "bad faith" necessary to award punitive damages. Therefore, the Court will deny that portion of the Debtor's damage request.

Based on the foregoing, it is hereby

ORDERED, that the Debtor's request for actual damages is granted in the sum of $15,000; and it is further

ORDERED, that the Debtor's request for costs and reasonable attorney's fees is granted in the sum of $3,150 attorneys fees and $374.88 in costs and disbursements; and it is further

ORDERED, that the Debtor's request for punitive damages is denied .

Dated at Utica, New York

this 11th day of October 2006

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STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge

[4] The Court notes that the Debtor and her husband paid their attorney a retainer of $800 and advanced certain expenses which Attorney Goldbas has deducted from his request. The Court, however, is awarding the full amount of the fee request and disbursements against Hartford since to do otherwise would provide Hartford with a windfall at the Debtor's expense.