

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK10-42169-TJM
)
MICHAEL H. STANTON and) CH. 7
KAREN A. STANTON,)
)
Debtor(s).)

ORDER

This matter is before the court on Filing #12, Motion to Assess Damages for Violation of the Automatic Stay, filed by the debtors. Andrew Snyder represents the debtors.

The debtors filed a Chapter 7 petition on July 14, 2010. On July 22, 2010, Radiology Imaging of NE, LLC, sent the debtors a statement attempting to collect a debt. At that time, Radiology Imaging of NE, LLC, had not been listed as a creditor. However, on or about August 9, 2010, the debtors filed an amended Schedule F listing Radiology Imaging of NE, LLC, as a creditor.

On August 23, 2010, Radiology Imaging of NE, LLC, sent a statement to the debtors attempting to collect a debt. On August 31, 2010, counsel for the debtors sent Radiology Imaging of NE, LLC, a letter indicating that the debtors had filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code on July 14, 2010. Radiology Imaging of NE, LLC, was notified of the application of the automatic stay and that a violation of the stay may be punishable as contempt of court.

On or about September 17, 2010, the debtors received from Revenue Enterprises, LLC, a notice attempting to collect a debt for Radiology Imaging of NE, LLC.

On September 23, 2010, the debtors filed this "Motion to Assess Damages for Violation of the Automatic Stay." In it, they assert that both Radiology Imaging of NE, LLC, and Revenue Enterprises, LLC, willfully violated the automatic stay after having been notified of the filing of the petition and the existence of the automatic stay.

A copy of the motion was provided by United States mail to Radiology Imaging of NE, LLC, and to Revenue Enterprises, LLC. The notice accompanying the motion informed both parties of a resistance date. No resistance was filed and no evidence was submitted by either of those parties explaining their failure to recognize and not violate the automatic stay.

Between October 26, 2010, and November 1, 2010, more than a month after the motion was filed, the debtors received another collection letter dated October 26, 2010, from Revenue Enterprises, LLC, attempting to collect a debt on behalf of "Radiology Imaging of Nebraska." (Fil. #17, Ex. A).

The Bankruptcy Code, at 11U.S.C. § 362(k)(1), provides "an 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."

I find that Radiology Imaging of NE, LLC, and its agent Revenue Enterprises, LLC, have willfully violated the automatic stay of 11 U.S.C. § 362. As a result of their continuing violation of

the automatic stay, and now the discharge injunction, both parties should be assessed actual damages in the form of attorney fees, as well as punitive damages because of their refusal to terminate their collection efforts.

Filing #14 is an affidavit of counsel for the debtors showing the actual attorney fees incurred as of the date of the affidavit. However, additional fees have been incurred since the date of the affidavit because of the receipt of the October 26, 2010, collection letter and the necessity to update the factual assertions as shown in the affidavit at Filing #17.

Total fees are awarded the debtors in the amount of \$550. Punitive damages are assessed jointly and severally against the offending parties in the amount of \$1,000. If the offending parties fail to pay the total amount of these assessments by November 24, 2010, the debtors may inform the court and a money judgment will be entered in favor of the debtors and against the offending parties. If any additional collection letters are received from the offending parties, the cost to them will be an assessment of \$1,000 for each new collection letter received.

IT IS ORDERED that the Motion to Assess Damages for Violation of the Automatic Stay, Filing #12, is granted. Fees are awarded the debtors in the amount of \$550, and punitive damages are assessed against Radiology Imaging of NE, LLC, and Revenue Enterprises, LLC, jointly and severally, in the amount of \$1,000.

DATED: November 4, 2010

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

*Andrew W. Snyder

Radiology Imaging of NE, LLC
P.O. Box 4958
Greenwood Village, CO 80155

Revenue Enterprises, LLC
P.O. Box 441368
Aurora, CO 80044

Movant (*) is responsible for giving notice to other parties if required by rule or statute.