

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>90-12223</u>
FLETCHER MALCOLM SPIRES)	
MICAELA D. SPIRES)	
a/k/a MICAELA E. YBABES)	
)	
Debtor)	
_____))	
FLETCHER MALCOLM SPIRES)	FILED
MICAELA D. SPIRES)	at 3 O'clock & 41 min. P.M.
Plaintiffs)	Date 8-9-91
)	
vs.)	Adversary Proceeding
)	Number <u>91-1052</u>
COLLECTIONS, LTD., a Division)	
of University Health Services,)	
Inc.)	
)	
Defendant)	

ORDER

Pursuant to notice, trial was held in this adversary proceeding August 5, 1991. Based upon the evidence presented, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Fletcher Malcolm Spires and Micaela D. Spires filed for protection under Chapter 13 of the Bankruptcy Code on December 14, 1990.

2. The defendant, Collections Limited, a division of University Health Services, Inc. ("Collections Limited"), was listed as an unsecured creditor in the

documents filed by the debtors, with an address shown on the petition of 620 13th Street, Augusta, Georgia 30901.

3. The Notice to Creditors was mailed by the Clerk on or about December 18, 1990, and Collections Limited received proper notice and subsequently filed proofs of claim in the amounts of Three Hundred Twelve and 43/100 (\$312.43) Dollars and One Hundred Thirty-Seven and 30/100 (\$137.30) Dollars, respectively.

4. On February 26, 1991, Collections Limited wrote Fletcher Malcolm Spires a letter demanding payment of the debt. (Plaintiffs' Ex. No. 1).

5. On March 4, 1991, the attorney for the debtors by letter notified Collections Limited that it had already filed proofs of claim, attached copies of the proofs of claim to the correspondence, that its action violated the automatic stay provisions of §362 of the Bankruptcy Code, and that all further collection efforts against the debtors should cease immediately. (Plaintiffs' Ex. No. 2).

6. Collections Limited ignored the admonitions of the attorney and wrote the debtors again on May 7, 1991, demanding payment of debts. (Plaintiffs' Exs. No. 3, 4 & 5).

7. On May 13, 1991, the attorney for the debtors again wrote to Collections Limited notifying it of his representation and again demanding the cessation of all collection efforts. (Plaintiffs' Ex. No. 6).

8. Collections Limited again ignored the warnings of the attorney and wrote to the debtors demanding payments of debts on May 28, 1991, and again on June 11, 1991. (Plaintiffs' Exs. No. 7, 8 & 9).

9. The debtors were required to retain the services of an attorney to stop the post petition collection efforts of Collections Limited which services include the bringing of this adversary proceeding.

CONCLUSIONS OF LAW

The actions of Collections Limited constitute a willful violation of the automatic stay of 11 U.S.C. §362 requiring the imposition of actual damages including reasonable attorney's fees. The actions of Collections Limited also warrant the imposition of punitive damages.

The automatic stay [of §362(a)] is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H. . Rep. 95-595 95th Cong 1st. Sess. (1977). The automatic stay is designed to stop "any act to collect . . . a claim against the debtor that arose before the commencement of a case under this title [11]." 11 U.S.C. §362(a)(6). The stay arises at the moment the debtor files a petition in bankruptcy. 11 U.S.C. §362(a). These debtors filed their Chapter 13 petition December 14, 1990. Collections Limited received timely notice of the filing and filed proofs of claim in the underlying Chapter 13 case. With full knowledge of the bankruptcy filing, Collections Limited mailed to the debtor, Fletcher Malcolm Spires, seven (7) post petition collection letters. Collections Limited admits that its actions violated the stay of §362, but asserts that the violations were not willful. The actions of Collections Limited in dunning the debtors for payment without question establishes willfulness as contemplated under §362(h). Willful does not require a showing of a conscious intent to harm. What is required is a showing that the party knew of the filing of the bankruptcy petition and with that knowledge, acted intentionally or deliberately. In re: Atlantic Business and Community Corp, 901 F.2d 325, 329 (3rd Cir. 1990); In re: Blume, 875 F.2d 224, 227 (9th Cir. 1989); Aponte v. Aungst (In re: Aponte), 82 B.R. 738, 742 (Bankr. E.D. Pa. 1988); In re: Braqq, 56 B.R. 46 (Bankr. M.D. Ala. 1985); Murray v. Pope et al. (In re: Murray) Chapter 13 case No. 90-12200 Adversary Proceeding No. 911045 (Bankr. S.D. Ga. Augusta Division Dalis, J. July 24, 1991);

Taylor v. U.S. (In re: Taylor) Chapter 13 case No. 89-11583 Adversary Proceeding No. 90-1036 (Bankr. S.D. Ga. Augusta Division Dalis, J. March 5, 1991); Randall v. Doctors and Merchants Credit Bureau, (In re: Randall) Chapter 7 case No. 89-10845 Adversary Proceeding No. 89-1035 (Bankr. S.D. Ga. Augusta Division Dalis, J. June 21, 1990); Williams v. H & H Service Store, Inc. (In re: Williams) Chapter 7 case No. 89-20499 Adversary Proceeding 89-2021 (Bankr. S.D. Ga. Brunswick Division Davis, J. February 7, 1990). This court has rejected the "too big" defense, a defense that the creditor is simply too large and handles too many accounts to be held responsible for its post petition collection efforts. This defense is without merit. The defendant knew of the stay and implemented procedures to collect the debt. This defendant now places a new twist to the "too big" defense. Collections Limited in essence asserts that its violations of the §362(a) stay were merely technical and not willful because since it handles over 40,000 collection accounts at any given time, it is necessary to employ the use of computers to assist it in efficiently collecting these accounts, the computer did it, and therefore Collections Limited's actions were not "willful." The definition of "willfulness" as contemplated under §362(h) renders this defense meritless as well. In establishing its collection procedures Collections Limited should have taken steps to prevent its violation of one "of the fundamental debtor protections provided by the

bankruptcy laws," the §362(a) stay. Through the actions of the creditor in dunning the debtors for payment, the initial relief contemplated by the Bankruptcy Code, relief from harassment, was thwarted. This creditor has employed the use of sophisticated modern computer technology in order to collect its accounts receivable. It has done so in order to efficiently collect its accounts so as to minimize its loss and maximize its income. The collections efforts had the effect of keeping the pressure on for payment regardless of the bankruptcy filing.

A willful violation of the automatic stay gives rise to an award of

damages. 11 U.S.C. §362(h). Section 362(h) mandates an award of actual damages which damages includes attorney's fees. Damages for emotional distress are recoverable for violations of 362(h). See, e.g., Mercer v. D.E.F., Inc., 48 B.R. 562 (Bankr. Minn. 1985); In re: Carrigan, 109 B.R. 167 (Bankr. W.D. N.C. 1989); Wyatt v. Melon Mortgage, Inc.-East, 36 B.R. 783 (Bankr. S.D. Ohio 1984). In this as in every Chapter 13 proceeding, the debtors filed for relief in order to stop creditors from attempting to collect money from them. The debtors have a reasonable expectation that when they sought relief under Chapter 13 of the Bankruptcy Code that creditors would cease collection efforts against them. The breach of this requirement to cease collection efforts gives rise to an award of actual damages.

Section 362(h) also authorizes punitive damages for willful stay violations in "appropriate circumstances." In order to recover punitive damages, "[t]he defendant must have acted with actual knowledge that he was violating a federally protected right or with reckless disregard of whether he was doing so." In re: Wagner, 74 B.R. 901, 903-04 (Bankr. E.D. Pa. 1987); see also In re: Lile, 103 B.R. 830, 841 (Bankr. S.D. Tex. 1989). "The purpose of punitive damage is to both punish and deter the offending party." It should be gauged by the gravity of the offense and set at a level sufficient to ensure that it will both punish and deter the party. (citations omitted). Mercer, supra, at 565. Collections Limited's egregious behavior justifies an award of punitive damages to the debtors. Collections Limited received ample notice of the debtors' bankruptcy; first, from the court then from the debtors' counsel following the first post petition collection letter and again from the debtors' counsel following additional post petition collection efforts. The actions of Collections Limited were in reckless disregard of whether it was violating a federally protected right. An award of punitive damages is warranted in order to deter future similar conduct by Collections Limited.

Debtors are entitled to actual damages in the amount of One Thousand and

No/100 (\$1,000.00) Dollars for the violation of the automatic stay of 11 U.S.C. §362(a) which includes the emotional distress suffered by the debtors as a result of Collections Limited's wrongful conduct. Reasonable attorney's fees as an additional component of actual damages in the amount of Five Hundred and No/100 (\$500.00) Dollars are awarded to the debtors' attorney. Additionally, punitive damages are awarded in the amount of Four Thousand Five Hundred and No/100 (\$4,500.00) Dollars.

It is therefore ORDERED that judgment be entered in favor of the debtors with damages set according to the provisions of this order.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 9th day of August, 1991.