IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In re:	:	**Case No. 98-2242 DH**
PATTY JO CAPION,	:	**Chapter 7**
Debtor.	:	

In re:	:	**Case No. 98-4140 DH**
JEFFREY DWAYNE BOWSER,	:	**Chapter 13**
Debtor.	:	

ORDER – MOTIONS TO HOLD CREDITOR IN CONTEMPT

Both debtors filed motions to impose sanctions upon Cross Country Bank for violation of the automatic stay. The parties stipulated that both matters could be consolidated for hearing which occurred on May 11, 1999 and June 29, 1999. Cross Country Bank was represented by Richard K. Updegraff and Miranda Hughes; Jeffrey D. Bowser and Patty Jo Capion were represented by James C. Wherry. At the conclusion of the hearing, the court took the matters under advisement upon a briefing schedule. Post-trial briefs have been filed, and the court now considers the matters fully submitted.

JURISDICTION

The order dismissing Jeffrey D. Bowser's case was entered on November 22, 1999, and the case was closed on December 13, 1999. Nevertheless, this court has jurisdiction over the motion to hold Cross Country Bank in violation of the automatic stay provisions in the Bowser case. The bankruptcy court has jurisdiction to hear proceedings "arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). The court heard this matter while the case was still open. The closing of a case does not necessarily end a bankruptcy court's jurisdiction. Koehler v. Grant, 213 B.R. 567, 569 (B.A.P. 8th Cir. 1997). "The damages action created by 11 U.S.C. § 362(h) for violation of the automatic stay survives closing or dismissal of the bankruptcy case and can be filed as a count in a civil action in federal court under § 1334(b) 'arising under' jurisdiction." In re Menk, 241 B.R. 896, 906 (B.A.P. 9th Cir. 1999), citing Price v. Rochford, 947 F.2d 829, 830-31 & n. 1 (7th Cir. 1991) ("§ 362(h) creates a cause of action that can be enforced after bankruptcy proceedings have terminated"); Javens v. City of Hazel Park (In re Javens), 107 F.3d 359, 363 n. 2 (6th Cir. 1997); Fernandez v. GE Capital Mortgage Servs., Inc. (In re Fernandez), 227 B.R.174, 179 (B.A.P. 9th Cir. 1998); Davis v. Courington (In re Davis), 177 B.R. 907, 910 (B.A.P. 9th Cir. 1995).

The court has jurisdiction of these matters pursuant to 28 U.S.C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a).

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and 28 U.S.C. § 157(b)(2)(O). Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACTS

Cross Country Bank

1. Cross Country Bank (hereinafter CCB) is a Delaware bank with an office in Wilmington, Delaware. Applied Card Systems (hereinafter ACS) is a corporation with offices in Boca Raton, Florida; Wilmington, Delaware; and Huntington, West Virginia. CCB and ACS are separate entities with different directors, but the stock of both corporations is owned by the same shareholder.

2. ACS is in the business of servicing credit card accounts for client banks. ACS services credit card accounts for CCB. CCB sets the policy regarding collection procedures that are followed by ACS.

3. ACS employs a credit department and mails out all billing statements and correspondence in CCB's name using ACS's Boca Raton address as a return address.

4. ACS uses a computer program for the printing and mailing of all statements and letters to CCB account holders.

5. ACS has a collection department which is responsible for placing telephone calls and mailing correspondence to customers who are delinquent in their payments. A computer program is also used to generate collection letters and telephone calls.

6. ACS employees use a fictional name in some of the collection procedures. This name is "Shane Neff."

7. CCB required written notification of the filing of a bankruptcy petition until some time in 1998. Thereafter, verbal notification was sufficient.

Capion

8. The Debtor, Mary Jo Capion, (hereinafter Capion) filed for relief under Chapter 7 of the U.S. Bankruptcy Code on May 18, 1998.

9. CCB was scheduled as an unsecured nonpriority creditor holding two claims, one for a MasterCard and the other for a VISA, in the total amount of $1,493.00.

10. Notice of commencement of the case under Chapter 7 of the Bankruptcy Code was given to CCB. CCB admits having received notice on May 27, 1998.

11. CCB, acting through ACS, contacted Capion personally after the filing of the petition and prior to May 28, 1998. Capion advised ACS's representative of the filing of the bankruptcy petition, the name and phone number of her attorney, and her bankruptcy case number.

12. On May 28, 1998, CCB submitted a proposed reaffirmation agreement, with a cover letter, to Capion's attorney.

13. Thereafter, ACS contacted Capion eleven (11) times by phone and in writing in an effort to collect its debt from her. Capion repeatedly asked the caller not to call her. This request was repeatedly ignored.

14. Capion suffered embarrassment, mental anguish and emotional distress as a result of these unauthorized contacts. As a result of the harassment by CCB and the

resulting embarrassment, mental anguish and emotional distress, Capion has suffered damages in the amount of $4,000.00.

15. Capion is entitled to recover punitive damages from CCB in the amount of $10,000.00.

16. Capion has incurred attorney's fees in the amount of $9,488.50 as a result of these unauthorized contacts.

Bowser

17. The debtor, Jeffrey D. Bowser (hereinafter Bowser) filed for relief under Chapter 13 of the U.S. Bankruptcy Code on September 18, 1998.

18. CCB was scheduled as an unsecured nonpriority creditor holding one claim for a VISA card in the total amount of $382.00.

19. Notice of commencement of the case was given to CCB. CCB admits having received the notice on October 1, 1998.

20. CCB has contacted Bowser by telephone and letter, at work and at home, 4 times after the filing of the petition. Bowser's requests that CCB terminate these contacts and contact his attorney were ignored by CCB's representatives.

21. Bowser has suffered embarrassment, mental anguish and emotional distress as a result of these unauthorized contacts. As a result of the harassment by CCB and the resulting embarrassment, mental anguish and emotional distress, Bowser has suffered damages in the amount of $2,000.00.

22. Bowser is entitled to recover punitive damages from CCB in the amount of $10,000.00.

23. Bowser has incurred attorney's fees in the amount of $8,069.50 as a result of these unauthorized contacts.

Findings of Common Fact

24. Post-filing contacts made by CCB or its agents to Capion and Bowser were made for the purpose of collecting the respective debts owed by Capion and Bowser.

25. CCB, through its agents, contacted Capion and Bowser by computer-generated letters, personal telephone calls, and recorded telephone messages, using the name of a fictional employee "Shane Neff."

26. Capion and Bowser presented evidence that CCB has violated the provisions of 11 U.S.C. § 362 in nine other cases. Three of these matters involve cases in the Southern District of Iowa, and six involve cases in other jurisdictions.

27. CCB's actions in contacting Capion and Bowser after the filing of their petitions and after it was advised of these filings and that they were represented by counsel were done with malice and as a result of willful misconduct and reckless indifference to the rights of Capion and Bowser.

DISCUSSION

This matter comes before the court on the debtors' Motions for Finding Violations of the Automatic Stay, Violations of the Iowa Consumer Credit Code, and for Sanctions. Capion alleges multiple violations of the automatic stay and requests that compensatory damages, punitive damages, costs, and attorney fees be imposed upon CCB. Capion also

alleges multiple violations of Iowa's Fair Debt Collection Practices Act (IDCPA) and requests the maximum amount ($1,000) in penalties be assessed for each violation along with attorney's fees.

Bowser alleges multiple violations of the automatic stay and requests that compensatory damages, actual damages, punitive damages, and attorney's fees be imposed upon CCB.

In response to the allegations by both Capion and Bowser, CCB argues that the violations were not willful or intentional and that neither debtor suffered actual damages as a result of any alleged actions by CCB. CCB further argues that an award of punitive damages is not appropriate in this case. In its Post-Trial Brief and Argument, CCB raises the issue of the court's jurisdiction over the IDCPA. CCB alleges that the court does not have jurisdiction over IDCPA because an action under this act is not a core proceeding and does not constitute an otherwise related proceeding.

A bankruptcy court may exercise jurisdiction over "all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11...." 28 U.S.C §§ 157(a), 1334(b). "Proceedings may 'arise under' title 11 if they involve a 'cause of action created or determined by a statutory provision of the Bankruptcy Code.'" Goldstein v. Marine Midland Bank, N.A. (In re Goldstien), 201 B.R. 1, 4 (Bankr. D. Maine 1996), quoting 1 William L. Norton, Jr., Norton Bankruptcy Law and Practice 2d § 4:38 at 4-230 (1994) (additional citations omitted). "'[A]rising under' title 11" means simply that the cause of action is either created or determined by the Bankruptcy Code. In Re Goldstein, 201 B.R. at 5. For a case to "'arise in'" a bankruptcy

case, the cause of action must be based "upon rights that cannot be pursued outside of the bankruptcy context." Id. A bankruptcy court may also exercise jurisdiction over a case pursuant to its "related to" jurisdiction. 28 U.S.C. §§ 157(a), 1334(b). The Eighth Circuit has adopted the following test for determining "related to" jurisdiction:

> [T]he test for determining whether a civil proceeding is related to a bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy * * *. An action is related to a bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action * * * and which in any way impacts upon the handling and administration of the bankrupt estate.

Dogpatch Properties, Inc. v. Dogpatch U.S.A, Inc. (In Re Dogpatch, U.S.A., Inc.) 810 F.2d 782, 786 (8th Cir. 1987), quoting Pacor v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984).

Based on the foregoing, the court cannot exercise jurisdiction over the violations of the IDCPA alleged by Capion. Capion filed a chapter 7 proceeding and the alleged violations took place post-petition. A cause of action based on the IDCPA does not arise in or under the Bankruptcy Code when proceeding under Chapter 7. Additionally, any recovery for the post-petition conduct of CCB would be personal recovery for Capion and not recovery by the estate. As such, neither the "arising in" nor the "related to" jurisdiction granted pursuant to 11 U.S.C. §§ 157(a), 1334(b) applies to the state claims alleged by Capion.

Bowser filed a Chapter 13 bankruptcy. In the Chapter 13 context, the court has "arising under" jurisdiction over the IDCPA pursuant to 11 U.S.C § 1306, which makes property acquired between commencement and dismissal of the case property of the estate. Bowser's Chapter 13 case was closed December 19, 1999. Thus, in applying the

test for determining "related to" jurisdiction, the court finds: 1) the civil charge of violations of the IDCPA will have no effect on administration of the bankruptcy estate; and 2) the outcome cannot alter Bowser's rights, liabilities, options, or freedom of action which in any way impacts upon the handling and administration of the bankrupt estate. Accordingly, this court declines exercising jurisdiction over the IDCPA claims. The remaining issues before the court involve alleged violations of the automatic stay.

The automatic stay provisions of the Bankruptcy Code are found at 11 U.S.C. § 362. Section 362 provides in relevant part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-
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> * * *
>
> > (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

"The automatic stay is a self-executing provision of the Code and begins to operate nationwide, without notice, once a debtor files a petition for relief." In the Matter of Schraff, 143 B.R. 541, 542 (S.D. Iowa 1992). In this case, Capion filed her Chapter 7 petition on May 18, 1998. Bowser filed his Chapter 13 petition on September 18, 1998. Any action by CCB to collect a debt after those respective dates is a violation of the automatic stay.

CCB, acting through its representatives and employees, attempted to collect a debt from Capion eleven (11) times after she filed her Chapter 7 petition on May 18, 1998. The contacts were made via mail and through telephone calls received by Capion

and members of her family. The court finds that these eleven (11) attempts to collect a debt were violations of the automatic stay.

Bowser alleged multiple contacts at work and at home by CCB. The evidence is inconclusive as to the actual date that many of these contacts took place. The court finds that CCB, acting through its representatives and employees, attempted to collect a debt from Bowser four (4) times after he filed his Chapter 13 petition on September 18, 1998. The collection attempts were made via mail to the debtor's home and through telephone calls to the debtor at his place of employment. The court finds that these four (4) attempts to collect a debt are violations of the automatic stay.

The debtors request an award of damages be granted to them. Money damages are available for willful violations of the automatic stay. Section 362(h) provides:

> (h) 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.

"A willful violation of the automatic stay occurs when the creditor acts deliberately with knowledge of the bankruptcy petition." Knaus v. Concordia Lumber Company (In re Knaus), 889 F.2 773, 775 (8th Cir. 1989). It is not necessary that the creditor intended to violate the stay, only that the creditor knew of the bankruptcy and intended to do the violating act. Schraff, 143 B.R. at 543.

CCB admits receiving notice of Capion's bankruptcy filing on May 18, 1998. CCB also admits receiving notice of Bowser's bankruptcy filing on October 1, 1998. The court finds that CCB had actual knowledge of the debtors' bankruptcy filings when it contacted each debtor attempting to collect their debts.

In response to evidence of multiple post-petition contacts presented by both Capion and Bowser, CCB argues that it did not have the requisite intent to support a finding of willfulness under the standard set forth in Knaus. Specifically, CCB claims that the contacts with Capion were the result of multiple human errors consisting first of a failure to note the bankruptcy on both credit cards, then a failure to "status the account" to stop collection mailings. CCB claims that the contacts made to Bowser resulted from computer errors and the unreliability of one of the collection systems used. Furthermore, CCB argues that it does everything possible to minimize the chances of error.

The testimony of CCB's corporate counsel is of particular importance in this matter. Based on her testimony, the court finds that CCB made no effort to contact cardholders to ask if they were in bankruptcy, made no effort to call up credit reports to determine if cardholders filed for bankruptcy, nor did CCB ask whether cardholders filed for bankruptcy on any of the 1.8 million monthly billing statements that went out to cardholders every month. In fact, this witness testified that upon finding out there were problems with the computer collection system, CCB's response was to let the matters run their course and deal with them as they came up.

The evidence also fails to support CCB's claim that it does all it can to minimize human error. CCB claims that "a supervisor checks all of the employee's work." However, CCB supervisors did not discover and remedy the failure of employees to note the bankruptcy on one of Capion's credit cards, nor the failure to "charge off" her accounts. Additionally, both Capion and Bowser presented evidence that they informed CCB of their respective bankruptcies on several occasions when called by CCB's

collection agents. The court finds that in making 11 contacts with Capion and 4 contacts with Bowser, CCB had at least 15 opportunities to remedy alleged errors and cease collection efforts, yet failed to do so.

The court finds that CCB acted deliberately and with the requisite intent when it contacted each debtor after the filing of each respective bankruptcy petition. CCB made the decision to let matters run their course and did nothing to stop collection efforts after becoming aware of employee errors. CCB acted deliberately in contacting Capion and Bowser. Accordingly, the court finds that the eleven (11) contacts with Capion after May 18, 1998, by CCB, its employees, or its agents, were willful violations of the automatic stay. See Knaus, 889 F.2 at 775. The court finds the four (4) contacts with Bowser made after September 18, 1998, by CCB, its employees, or its agents, were willful violations of the automatic stay. See Id.

The Eighth Circuit addressed the propriety of awarding damages, costs, and attorney's fees for automatic stay violations in Lovett v. Honeywell, 930 F.2d 625 (8th Cir. 1991). "[T]o recover under section 362(h), the party seeking the award must show that he was injured by the violation of the stay...." Id. at 628. In determining that actual and punitive damages were not appropriate in Honeywell, the 8th Circuit Court based its decision on the "narrow circumstances in the case." Id. at 629. Of particular importance was the timing of decisions by the Eighth Circuit and the Interstate Commerce Commission concerning undercharge collection. Id. The circuit court stated that there was insufficient evidence in the record to support an award of actual damages, and therefore an award of attorney's fees was not appropriate. Id. The court was concerned

that the only evidence of damage consisted of the "time expended by the trustee's counsel in bringing the motion for the temporary restraining order and contempt sanction." Id.

In this case, both debtors testified as to lost wages as a result of taking time off work to testify in this action. Both debtors testified as to the expense of traveling to the court to testify to this action. Debtors also presented evidence that collection efforts by CCB did not cease until the motions were filed. The court finds that each debtor incurred actual damages for lost wages as a result of time taken off work and for travel associated with bringing this action.

Lost wages and travel expenses are not the only evidence of actual damages, however. Both debtors seek recovery for emotional distress, mental anguish, and annoyance as part of the actual damages they allegedly suffered. In response, CCB argues that such damages may not be awarded because the evidence presented is speculative and based on conjecture.

In support of its position, CCB cites to In Re Briggs, 143 B.R. 438 (Bankr. E.D. Mich. 1992) and Diviney v. NationsBank of Texas (In Re Diviney), 211 B.R. 951, 967 (Bankr. N.D. Okla. 1997). In Briggs, the evidence presented to support the debtor's claim of emotional distress was his own vague and conclusory testimony. Briggs, 143 B.R. at 463. In Diviney, the evidence consisted of heated conversations and some use of profanity. Diviney, 211 B.R. at 967. Diviney, however, does acknowledge that damages for emotional distress have been awarded in cases where the evidence is clearer. Id. at 967-68. One such case is Flynn v. Internal Revenue Service (In Re Flynn), 169 B.R.

1007, 1023 (Bankr. S.D.Ga.1994), aff'd in part, rev'd in part by 185 B.R. 89 (S.D. Ga.1995).

In Flynn, the Internal Revenue Service wrongfully levied on debtor's bank accounts, forcing debtor to "endure the stress of knowing that a number of her checks would bounce...[and] the emotional trauma of having to cancel a planned birthday party for her child...." Id. at 1023. The court in Flynn awarded damages for mental anguish based solely on the uncontradicted testimony of the debtor. Id. In doing so, the court stated:

> The overpowering sense of humiliation, embarrassment and shame occasioned by the levy and its consequences was only exacerbated by the Debtor's knowledge that she should have been spared these indignities because of the dictates of federal law which her attorney had guaranteed would protect her during her Chapter 13 case.

Id.

This court finds the reasoning of Flynn to be persuasive. Both Capion and Bowser testified credibly as to the anguish each suffered as a result of CCB's violations of the automatic stay. Capion testified that she suffered nervousness. Her husband testified that as a result of the letters and telephone contacts, Capion had to take time off of work, suffered sleepless nights, and the marriage was strained. The court finds the testimony of both Capion and her husband to be credible.

Bowser testified that CCB telephoned him at work. These calls made him feel anxious and worried him. He felt harassed. The court also finds his testimony to be credible.

This court notes that while some courts have required corroborating medical testimony, in such instances there was only a single violation of the automatic stay or a lack of credible evidence. See, e.g., In Re Aiello, 231 B.R. 684 (Bankr. N.D. Ill. 1999)(holding that debtor's nausea, fright, and quarrels with husband in response to a single letter from the creditor were fleeting and inconsequential). In stark contrast to such cases, the evidence presented to this court consists of eleven (11) post-petition contacts with Capion and four (4) post-petition contacts with Bowser. Such evidence indicates a continuous, on-going effort by CCB to collect on debts even after it had actual knowledge of the bankruptcy filings. Considering every debtor is statutorily assured that collection efforts will cease upon filing of bankruptcy petitions, the on-going collection efforts by CCB coupled with the credible testimony of the debtors and the witnesses provides sufficient evidence to establish actual suffering because of emotional distress and humiliation by each debtor.

Debtors have requested that punitive damages be assessed against CCB, claiming that CCB's actions were egregious, intentional, and constitute a pattern or practice of disregard for the law. CCB argues that punitive damages are not appropriate, as there is no showing of "egregious, intentional conduct." Specifically, CCB claims the contacts made with Bowser are attributable to a computer flaw. CCB argues that punitive damages are not appropriate in Capion because the contacts are attributable to human errors and employees who fail to follow procedures. Furthermore, CCB argues that no pattern of misconduct or disregard of the law has been proven.

Section 362(h) provides for punitive damages in "appropriate circumstances." The Eight Circuit holds that "appropriate circumstances" consist of "egregious, intentional misconduct" on the violator's part. United States v. Ketelsen, 880 F.2d 990, 993 (8th Cir. 1989). In Ketelsen, the court denied a punitive damage award where the Farmers Home Administration ("FmHA") decided to offset indebtedness by retaining a portion of the Ketelsen's income tax refund. Id. at 991. The FmHA had relied on its legal counsel who advised that the FmHA was legally entitled to the offset amount. Id. Although the court found that the offset by the FmHA was a willful violation of the automatic stay, punitive damages were not awarded because the court found the FmHA did not engage in intentional misconduct. Id. at 993.

In determining whether there was "egregious, intentional misconduct," the court finds CCB's use of the fictitious name "Shane Neff" to be of importance. Each debtor received mailings from a person named "Shane Neff." Additionally, Capion received telephone calls from a person named "Shane Neff." CCB argues that the use of a fictitious name is prevalent in the collection industry and does not violate federal law. To support that argument, CCB cites to Johnson v. NCB Collection Services, 799 F. Supp. 1298, 1302 (D. Conn. 1992), which holds that use of a fictitious name does not violate federal law. There is a noteworthy difference between Johnson and Capion and Bowser. In Johnson, the issue was whether the use of a fictitious name violated the Federal Debt Collection Practices Act. Id. The issue in Capion and Bowser is whether the use of the fictitious name "Shane Neff" evidences misconduct or disregard for the law, not a violation of the law itself. The court's reasoning in Johnson does add some insight to the

issue at hand, however. While the Johnson court found that the use of a fictitious name "does not ipso facto violate the FDCPA," "the use of an alias or office name may be in some sense a 'false representation.'" Id.

In the context of Capion and Bowser, the court finds the use of a fictitious name to be misleading to the debtors. If a debtor receives a collection notice from CCB and attempts to contact "Shane Neff," that debtor can never actually speak to the person who is continually violating the automatic stay. Instead, the debtors are routed to the first available operator. By using a fictitious name, the creditor conceivably has a readily available excuse for the debtor who claims to have called to remedy the situation by stating that the debtor did not contact the correct person. Additionally, if the debtor informs CCB of the bankruptcy filing, as both Capion and Bowser did, then continues to receive collection letters from "Shane Neff" despite efforts to contact that person, it becomes clear to the debtor that CCB does not intend to cease collection efforts.

To evidence "egregious, intentional misconduct" through recklessness or disregard for the law, the debtors have introduced evidence of nine (9) other cases filed against CCB for violations of the automatic stay. In response, CCB argues that the eleven (11) total cases, including Capion and Bowser, represent "all of the matters filed against CCB involving allegations regarding stay violations." Although CCB distinguishes each case based on the circumstances giving rise to the stay violations, it overlooks the underlying fact that in each case, there was a stay violation. The court determines that the individual excuse given in each case by CCB is of no importance in determining a pattern of violations. Of primary importance is that the violations

occurred. Accordingly, the court finds the nine (9) cases presented documented violations of the automatic stay, evidencing a pattern of disregard for the law.

The court finds that debtors have established a pattern of recklessness or disregard for the law evidencing "egregious, intentional misconduct." Additionally, the court finds use of the fictitious name "Shane Neff" while continuing collection efforts to be misleading.

The court finds that CCB knew that collection efforts after filing of a bankruptcy petition violated the automatic stay, yet collection efforts in this case were continually pursued. The court finds that with nine (9) separate cases brought against CCB for violations of the automatic stay, CCB had ample opportunity to remedy alleged computer errors or human errors which gave rise to its continued collection efforts. The court finds that the eleven (11) post-petition contacts to Capion and the four (4) post-petition contacts to Bowser constitute a flagrant, egregious, intentional disregard of the automatic stay by CCB.

In total, CCB's response to notices of the filing of bankruptcy petitions and notices of the violations of the automatic stay appears to be a cavalier mind set that all of this is just another cost of doing business. CCB's computer programs were finely tuned to the collection process, but the protections given to debtors by the automatic stay provisions of the Bankruptcy Code were regarded with contempt and disregarded. Accordingly, this court finds that "appropriate circumstances" exist which justify the assessment of punitive damages against CCB.

The debtors have requested an award of attorney's fees incurred in bringing this action under §362(h). The Eighth Circuit holds that where there is insufficient evidence in the record to support an award of actual damages, an award of attorney's fees is not appropriate. Honeywell, 930 F.2d at 629. In this case, there is ample evidence of actual damages suffered by the debtors, including time off work, travel, emotional distress, and humiliation. Additionally, the court has found that actual damages were suffered by the debtors. Therefore, an award of attorney's fees under §362(h) is justified.

This court has made it quite clear that attorney's fees must be specifically documented in order to be awarded. In re Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1989); In re Karas, No. 91-2890-CH (Bankr. S.D. Iowa April 28,1992)(Judge Hill decision #221). In this case, the debtors produced affidavits of attorney's fees incurred in bringing the present action on behalf of Patty Jo Capion and Jeffrey D. Bowser. Each affidavit by debtors' counsel sets forth in full account the time and efforts expended in bringing this action. The time expended and rates charged are reasonable and necessary for the prosecution of these matters. The damages suffered in total by both debtors go beyond the expenses of bringing this action. Therefore, the court finds that the debtors have produced sufficient evidence of time and effort expended beyond the bringing of the motion for sanctions to satisfy Honeywell's standard for damages. The court appreciates that when debtors have to pay an attorney to address violations of the stay, the expenses incurred, at least those beyond bringing of the § 362(h) motion, are a real monetary damage to the debtor. In re Fridge, 239 B.R. 182,191 (Bankr. N. D. Ill. 1999).

ORDER

IT IS ACCORDINGLY ORDERED as follows:

(1) Cross Country Bank has willfully violated the provisions of 11 U.S.C. §362 as they relate to Patty Jo Capion.

(2) Cross Country Bank has willfully violated the provisions of 11 U.S.C. §362 as they relate to Jeffrey Dwayne Bowser.

(3) Actual damages are awarded to Patty Jo Capion in the amount of $4,000.00.

(4) Actual damages are awarded to Jeffrey Dwayne Bowser in the amount of $2,000.00.

(5) Jeffrey Dwayne Bowser shall be awarded judgment in the amount of $382.00 plus interest, which may be offset by Cross Country Bank's claim against Jeffrey Dwayne Bowser.

(6) Patty Jo Capion is entitled to punitive damages assessed against Cross Country Bank in the amount of $10,000.00.

(7) Jeffrey Dwayne Bowser is entitled to punitive damages assessed against Cross Country Bank in the amount of $10,000.00.

(8) Attorney's fees and costs are awarded pursuant to §362(h) in the matter of Patty Jo Capion in the amount of $9,488.50.

(9) Attorney's fees and costs are awarded pursuant to §362(h) in the matter of Jeffrey Dwayne Bowser in the amount of $8,069.50.

Dated this ______ day of June, 2000.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT