

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

MARK PALMER,

Alleged Debtor.  
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Case No. 8-16-71186-reg

Involuntary Chapter 7

**MEMORANDUM DECISION**

Tama Enterprises, Inc. (“Tama”), Arcadia Management Services, Inc. (“Arcadia”), Tech Scan Services, Inc. (“Tech Scan”), and Guma Development, Inc. (“Guma,” and together with Tama, Arcadia and Tech Scan, the “Petitioners”) filed an involuntary Chapter 7 petition (“Involuntary Petition”) against Mark Palmer (“Alleged Debtor”). After a hearing on the Alleged Debtor’s motion to dismiss the Involuntary Petition, the Court concluded that dismissal was warranted and entered an order of dismissal. Because this is an involuntary petition, dismissal does not end the process. The decision to place an individual or a business into bankruptcy carries serious consequences if the filing of the involuntary petition was unwarranted. Section 303(i) of the Bankruptcy Code provides that the petitioning creditors may be ordered to pay the involuntary debtor’s legal fees and costs, and may be subject to proximate damages and punitive damages if the involuntary petition was filed in bad faith. This provision in the Bankruptcy Code is unique in several aspects: the Code specifically provides for fee-shifting in the event the petitioning creditor is unsuccessful, and this is one of the few sections that authorizes an award of punitive damages. The severity of the consequences if an involuntary petition is dismissed reflect the grave possibility of injury if an individual or business is put into bankruptcy improperly. The power to place someone into bankruptcy should not be taken lightly, and proper diligence into the alleged debtor’s financial condition, along with the nature of the debt owed, should be undertaken.

In this case, the Alleged Debtor seeks a determination of 1) the amount of attorneys' fees to be awarded to the Alleged Debtor pursuant to 11 U.S.C. § 303(i)(1)(B), 2) whether punitive damages are appropriate pursuant to 11 U.S.C. § 303(i)(2), and 3) whether to grant equitable relief under § 303(k)(1)(A) sealing the court record relating to the Involuntary Petition, and § 303(k)(2) prohibiting all consumer reporting agencies from making any consumer report which contains any of the foregoing. The parties were encouraged by the Court to reach a consensual resolution regarding these outstanding matters, but were unable to do so. While the Court was ready to mark the matter submitted, counsel to Arcadia, Tech Scan and Guma requested an evidentiary hearing to examine the Alleged Debtor. A hearing was held ("Damages Hearing"). One of the Petitioners, Tama, failed to appear for several scheduled hearings, including the Damages Hearing. After the Damages Hearing and upon a full review of the record, the Court finds that the Alleged Debtor is entitled to a judgment against the Petitioners in the amount of \$205,271.49, comprised of \$105,271.49 in legal fees incurred by the Alleged Debtor in connection with the Involuntary Petition, and \$100,000 in punitive damages.

### **Background and Facts**

The Alleged Debtor and his wife (the "Palmer's") hired the Petitioners to perform construction on certain property ("Property") that they jointly owned. Soon thereafter, a dispute arose over the status and quality of construction. According to the Alleged Debtor, the Petitioners made persistent demands for additional payments for work allegedly performed,<sup>1</sup> and when he requested supporting documentation, the Petitioners walked off the job without proper excuse or

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<sup>1</sup> According to the Palmer's complaint in state court, the Petitioners attempted to collect over \$400,000 for undocumented payroll in order to finish the project despite having already collected \$500,000 beyond the contract price. See Exhibit I, ¶¶ 31-35 of Mot. to Dismiss; dkt. 5. Since then, the Palmer's paid over \$450,000 to other contractors to complete the project. See ¶ 23 Mot. to Dismiss; dkt. 5.

explanation. In September 2015, the Petitioners filed mechanics' liens against the Property in the aggregate amount of \$760,525. *See* Exhibits E,F,G,H of Mot. to Dismiss; dkt. 5.

A few months later, the Palmers commenced a lawsuit in state court against the Petitioners and others, seeking recovery for, *inter alia*, breach of contract and fraudulent inducement, and seeking cancellation of liens. *See* Exhibit I of Mot. to Dismiss; dkt. 5. The Petitioners answered and asserted counterclaims seeking recovery of \$760,525, which is equal to the amount of their mechanics' liens, and seeking to foreclose against the Property. *See* Exhibit J of Mot. to Dismiss; dkt. 5. While the state action was pending, the Petitioners filed the Involuntary Petition against the Alleged Debtor, listing their claims as unsecured in the aggregate amount of \$760,525. *See* Involuntary Petition; dkt. 1. The alleged damages set forth in the Petitioners' counterclaims in state court are identical to the amount of claims set forth in the Involuntary Petition.<sup>2</sup>

The Alleged Debtor moved to dismiss the Involuntary Petition pursuant to 11 U.S.C. § 303 or to abstain pursuant to 11 U.S.C. § 305, which was opposed by the Petitioners. After an initial hearing on the motion to dismiss, the Court entered a pre-trial order ("Pre-Trial Order") on July 11, 2016 setting forth a discovery deadline. The Petitioners, however, did not respond to or answer any of the Alleged Debtor's discovery requests. *See* dkt. 13. At a subsequent hearing on September 19, 2016, the Court granted the Alleged Debtor's motion to dismiss the Involuntary Petition. On October 6, 2016, the Court entered an order ("Dismissal Order") dismissing the Involuntary Petition and scheduling a hearing to determine 1) whether entry of a judgment for attorneys' fees, costs, and damages, including punitive damages, should be entered against any or all of the Petitioners pursuant to 11 U.S.C. § 303(i), and 2) whether relief under 11 U.S.C. § 303(k)

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<sup>2</sup> The service of the Involuntary Petition was defective; it was sent to the Alleged Debtor's prior residence. He discovered the Involuntary Petition after a month it was filed when Chase Bank cancelled his credit cards.

was warranted. Dkt 17. The Dismissal Order contained an admonition that the Petitioners' failure to "fully cooperate" in discovery could result in an award of sanctions. Dkt. 17. Undeterred, the Petitioners continued to refuse to cooperate in discovery. *See* 10/19/16 Hearing Tr. 9:19. The Petitioners were cautioned by the Court that their continued failure to comply with discovery could have serious consequences in the proceeding. *See* 10/19/16 Hearing Tr. 13:18-21 (Judge Grossman) ("If you fail to comply with the [Dismissal Order], then you will not be permitted to introduce anything [at the next hearing]."). Notwithstanding the Court's warning, the Petitioners violated the Dismissal Order by failing to comply by the October 14, 2017 discovery deadline. *See* 11/30/16 Hearing Tr. 6:23-25. A hearing was held on November 30, 2016, and the Court urged the parties to settle the remaining issues concerning damages pursuant to Section 303. The parties were unable to reach an agreement, and counsel to Arcadia, Tech Scan and Guma filed a letter with the Court requesting a hearing in order to examine the Alleged Debtor. On January 19, 2017, the Court entered an order scheduling the Damages Hearing. Dkt. 37.

At the Damages Hearing, the Alleged Debtor testified regarding the negative effects he suffered as a direct result of the filing of the Involuntary Petition. None of the Petitioners testified at the Damages Hearing regarding their conduct in connection with the Involuntary Petition, and they provided no evidence regarding their decision to file the Involuntary Petition. In the post-trial submission by Arcadia, Tech Scan and Guma, they cast blame on the Alleged Debtor, whose conduct allegedly misled them into believing that he "was bankrupt." *See* Post-Damages Hearing Brief by Arcadia, Tech Scan and Guma at 3; dkt. 43. They also claim that punitive damages are not warranted because their former counsel did not provide proper advice in this matter, and that any award of attorneys' fees and costs would serve as a sufficient deterrent. The Alleged Debtor seeks \$104,442.33 in attorneys' fees and \$829.16 in costs pursuant to § 303(i)(1), punitive

damages in the amount of at least \$100,000 pursuant to § 303(i)(2), and equitable relief under § 303(k)(1)(A) sealing the court record relating to the Involuntary Petition. The Alleged Debtor also requests, pursuant to § 303(k)(2), that all consumer reporting agencies be prohibited from making any consumer report which contains any of the foregoing.

### **Jurisdiction**

This Court has jurisdiction over this matter as a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to §§ 1408 and 1409.

### **Discussion**

#### **I. Reasonable Attorneys' Fees and Costs Under § 303(i)(1)**

Section 303(i)(1) provides that if a bankruptcy court dismisses an involuntary petition over the objection of petitioning creditors, the court may grant judgment against the petitioners for costs and reasonable attorneys' fees. 28 U.S.C. § 303(i)(1). The purpose of § 303(i)(1) is to discourage the use of an involuntary petitions as a tactic to force an alleged debtor into settling a speculative or validly disputed debt. *In re TPG Troy, LLC*, 793 F.3d 228, 235 (2d Cir. 2015). It is a “fee-shifting provision that requires no showing of bad faith . . . .” *In re TPG Troy, LLC*, 793 F.3d at 235.<sup>3</sup> Dismissal of an involuntary petition creates a rebuttable presumption in favor of an award of reasonable attorneys' fees and costs. *See, e.g., In re Mountain Dairies, Inc.*, 372 B.R. 623, 637 (Bankr. S.D.N.Y. 2007) (citing *In re Squillante*, 259 B.R. 548, 553-54 (Bankr. D. Conn. 2001)). The petitioning creditor has the burden to rebut the presumption by establishing that fees and costs are unwarranted. The Second Circuit has adopted a “totality of circumstances” test of factors to

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<sup>3</sup> Because § 303(i)(1) is a fee-shifting provision, attorneys' fees and costs incurred in preparing and litigating a 303(i) motion itself may be included. *See In re S. Cal. Sunbelt Developers, Inc.*, 608 F.3d 456, 461-62 (9th Cir. 2010).

consider, which include: “(1) the merits of the involuntary petition; (2) the role of any improper conduct on the part of the alleged debtor; (3) the reasonableness of the actions taken by the petitioning creditors; and (4) the motivation and objective behind the filing of the petition.” *In re TPG Troy, LLC*, 793 F.3d at 235 (citing *In re Taub*, 438 B.R. 761, 775 (Bankr. E.D.N.Y. 2010)).

In this case, the Court granted the Alleged Debtor’s motion to dismiss the Involuntary Petition and held a hearing to determine whether an award of fees is warranted. The Petitioners do not challenge the Alleged Debtor’s entitlement to attorneys’ fees. In fact, Tama failed to appear at the Damages Hearing and did not file a brief regarding damages. The sole objection by Arcadia, Tech Scan and Guma is to the reasonableness of the fees sought. According to Arcadia, Tech Scan and Guma, the fees are unreasonable and excessive given the lack of litigation and complexity of the case. The Court disagrees.

To support his request for an award of attorneys’ fees and costs, the Alleged Debtor and his counsel submitted declarations, time records and copies of the billing statements, which are detailed and specific. A review of the time records and billing statements by the Alleged Debtor’s bankruptcy counsel and state court counsel reveal that the work performed was in direct response to the filing of the Involuntary Petition. The record also shows that the Petitioners refused to cooperate in discovery, which caused the Alleged Debtor to incur additional legal fees and costs. After a hearing on the Alleged Debtor’s motion to dismiss, the Court entered the Pre-Trial Order setting forth a discovery deadline. *See* dkt. 11. The Petitioners, however, did not respond or answer any of the Alleged Debtor’s discovery requests. *See* dkt. 13 (Alleged Debtor’s letter advising the Court of the Petitioners’ violation of the Pre-Trial Order). Another hearing was held after which the Court entered the Dismissal Order containing the admonition that the Petitioners’ failure to “fully cooperate” in discovery may result in sanctions. *See* dkt. 17. The Petitioners

continued to defy the Court's orders and refused to participate in discovery. Their purposeful efforts to obstruct discovery prolonged the litigation and unnecessarily complicated the process.

Because three of the Petitioners asked for an evidentiary hearing after being unable to reach a settlement, the Alleged Debtor had to incur additional attorneys' fees and costs in connection with the Damages Hearing. The Petitioners did not demonstrate any mitigating factors against awarding punitive damages, nor did they conduct an inquiry into the actual amount of fees incurred by the Alleged Debtor. However, counsel to Arcadia, Tech Scan and Guma did question the Alleged Debtor about the events concerning construction on the Property and his credit history. Although the Court gave wide latitude to Arcadia, Tech Scan and Guma in their questioning, the Court notes that no evidence was elicited at the Damages Hearing regarding the reasonableness of the legal fees and expenses sought, and none of the Petitioners testified regarding their motivation or thought process in deciding to file the Involuntary Petition. While the Alleged Debtor's testimony highlighted the hardship he endured as a result of the Petitioners' conduct, nothing in the record rebuts the presumption that attorneys' fees and costs should be awarded to the Alleged Debtor. For the reasons set forth above, the Alleged Debtor is entitled to \$104,442.33 in attorneys' fees and \$829.16 in costs, pursuant to § 303(i)(1). The Court will now address punitive damages.

## **II. Punitive Damages Under § 303(i)(2)**

An award of punitive damages does not require proof of actual damages but it must be reasonably related to the injury inflicted and its cause. *See In re Atlas Mach. & Iron Works*, 190 B.R. 796, 804 (Bankr. E.D. Va. 1995) (“[S]ection 303(i)(2)(B) does not require proof of actual damages as a prerequisite to an award of punitive damages.”). It is not automatically imposed upon a finding of bad faith, but a finding of bad faith is required if punitive damages are to be awarded. *In re Silverman*, 230 B.R. 46, 52 (Bankr. D.N.J. 1998). There is a presumption of good

faith in the petitioning creditor's favor, and the alleged debtor has the burden of establishing that the petitioning creditor acted in bad faith. *See In re Bayshore Wire Prods. Corp.*, 209 F.3d 100, 105 (2d Cir. 2000).

The Second Circuit has recognized that there are multiple tests employed by courts to determine whether a petition was filed in bad faith for the purposes of § 303(i)(2). *Id.* The tests often overlap, and are identified as follows:

The *improper use test* questions whether the petitioning creditor used the involuntary bankruptcy process to obtain an improper advantage over other creditors rather than pursuing collection in the appropriate nonbankruptcy forum. The *improper purpose test* questions the petitioning creditor's reason for filing the involuntary petition, focusing particularly on whether the petitioner sought to destroy the alleged debtor. The improper purpose test is virtually identical to the *subjective test* which focuses on the creditor's state of mind and motivations for filing the petition. The *objective test* measures bad faith according to the reasonable person standard. The combined *subjective/objective test* which is patterned after Rule 9011 of the Fed R. Bankr. P. is the most inclusive test, considering the petitioning creditor's motives and whether he acted as a reasonable person in filing the petition.

*In re Silverman*, 230 B.R. at 51, n. 2 (internal citations omitted); *see also In re Bayshore Wire Prods. Corp.*, 209 F.3d at 105-106 (The Second Circuit notes that "bad faith" is not defined in the Bankruptcy Code, and identifies the same tests to determine whether an involuntary petition was filed in bad faith.).

In applying these tests, courts have found bad faith sufficient to warrant punitive damages under § 303(i)(2) where a petitioning creditor files an involuntary petition knowing that the underlying claims are disputed, *see In re John Richards Homes Bldg. Co., L.L.C.* ("JRHB"), 291 B.R. 727 (Bankr. E.D. Mich. 2003), *aff'd*, 439 F.3d 248 (6th Cir. 2006), and where a petitioner uses an involuntary petition as a litigation tactic. *See In re Skyworks Ventures, Inc.*, 431 B.R. 573, 576 (Bankr. D.N.J. 2010).

Here, the Alleged Debtor has satisfied his burden of proof that the Petitioners commenced the Involuntary Petition in bad faith. When they filed the Petition, they knew that their claims were the subject of a bona fide dispute because they had responded to the Alleged Debtor's state court complaint by filing an answer and counterclaims. *See JRHB*, 291 B.R. at 732. Their alleged claims had not been reduced to judgment, and were the subject of a hotly disputed litigation in state court. Not only did the Petitioners fail to establish that the Alleged Debtor was not paying his debts as they became due, they also failed to comply with the Court's orders. The record supports a finding that the Petitioners used the Involuntary Petition as a litigation tactic, which satisfies the improper use test. *See In re Skyworks Ventures, Inc.*, 431 B.R. at 576. It does not appear that the Petitioners conducted any appropriate inquiry into the facts before filing the Involuntary Petition to determine whether they met the statutory requirements. The Petitioners' conduct leads the Court to conclude that the Petitioners were concerned with obtaining an advantage in the state court litigation, which finding satisfies the objective test, as well as the subjective/objective test. Based on the application of these tests, the Petitioners' conduct exhibited bad faith in their decision to file the Involuntary Petition.

Having determined that the Involuntary Petition was filed in bad faith, the Court turns to whether punitive damages are warranted. The purpose of punitive damages is to punish a wrongdoer and deter similar conduct rather than compensate for actual loss. *See, e.g., In re Grecian Heights Owners' Ass'n*, 27 B.R. 172, 174 (Bankr. D. Or. 1982). In order to determine the amount of punitive damages sufficient to serve those objectives, courts generally consider the degree and nature of the wrong to the debtor, the intent of the creditors, and any surrounding aggravating or mitigating circumstances. *See In re Meltzer*, 535 B.R. 803, 815 (Bankr. N.D. Ill. 2015) (citing *JRHB*, 291 B.R. at 738). The determination is a discretionary one. *G.G. v. Grindle*,

665 F.3d 795, 800 (7th Cir. 2011). For example, in calculating punitive damages, courts may consider a petitioner's net worth and the gravity of the consequences of involuntary petition. *See In re Silverman*, 230 B.R. at 54 (awarding \$50,000 in punitive damages after reviewing the totality of circumstances and in light of petitioner's egregious behavior and net worth).

The amount of punitive damages offends the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, only if it is grossly excessive in relation to the court's legitimate interests in punishment and deterrence. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 409 (2003); *see also JRHB*, 291 B.R. at 738. To determine whether an award is grossly excessive, the Supreme Court has instructed courts reviewing punitive damages to consider three guideposts: (1) the degree of reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties. *Campbell*, 538 U.S. at 409; *see also JRHB*, 291 B.R. at 738. The Supreme Court has rejected any mathematical bright-line test but has approved punitive damages of more than four times compensatory damages and ten times the potential damages. *See JRHB*, 291 B.R. at 738 (citing *BMW of N. Am. v. Gore*, 517 U.S. 559, 582 (1996)).

Arcadia, Tech Scan and Guma argue that punitive damages are unwarranted because an award of attorneys' fees and costs are a sufficient deterrent. They further assert that even if punitive damages are warranted, \$100,000 is an unreasonable and excessive award. Furthermore, Arcadia, Tech Scan and Guma allege they were misled by the Alleged Debtor into believing that he was insolvent, and they acted on poor legal advice from their former counsel. The Court disagrees.

At the Damages Hearing, the Alleged Debtor testified as follows:

Q: Did you on the date in the course of conversation with the contractor and subs tell them you were out of money?

A: No. I texted Danny sometime that week when he was making claims about \$300,000. And I said, I don't have that cash. I mean, I don't have \$300,000 sitting around. And, really, I was trying to make the greater point of (indiscernible) phantom. I'm not paying bills that you don't give me any proof. You have no proof that you did this work.

.....

Q: Just in following up that thought a second. So you led him to believe you were running out of money and you couldn't pay him then.

.....

A: Yeah, I led him to believe that I didn't have the cash to pay money that I didn't owe, and that I was out for that job. I was already – he was already \$500,000 over the budgeted estimate for the job, the contracted amount. So, yeah, I was out of money for paying for somebody that was doing a s----y job and not producing bills.

Q: So it was very plausible that he believed that you had no more money.

A: Sure, not for him.

04/04/17 Hearing Tr. 12:23-14:10 (Mark Palmer). This is the only evidence introduced by the Petitioners to support their claim that the Alleged Debtor somehow misled them. *See* Post-Damages Hearing Brief by Arcadia, Tech Scan and Guma at 3; dkt. 43. Contrary to the assertions of Arcadia, Tech Scan and Guma, the record does not reflect that the Petitioners were misled by the Alleged Debtor into thinking that he could not pay his debts as they came due. Rather, the testimony shows that the Alleged Debtor was unwilling to pay for their services without supporting documentation. The record falls far short of establishing any conduct on the part of the Alleged Debtor which led them to believe that the statutory requirements of § 303(b) had been satisfied.<sup>4</sup>

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<sup>4</sup> 11 U.S.C. § 303(b) provides:

Furthermore, a majority of courts agree that punitive damages may be assessed against creditors who proceed in bad faith even if they have done so in reliance on counsel for the acts which exhibited bad faith. *In re Reveley*, 148 B.R. 398, 408 (Bankr. S.D.N.Y. 1992) (“Where the petition is motivated by ill will or malice, reliance upon counsel’s advice will not preclude a finding of bad faith on the part of the petitioner.”); *In re Silverman*, 230 B.R. at 54 (“The advice of counsel defense has sometimes been held as a basis for reducing an award of damages premised upon an improper use of the bankruptcy system, but it cannot reduce an award based on improper purpose and blatant disregard for the statutory requirements.”); *In re McDonald Trucking Co.*, 76 B.R. 513, 519 (Bankr. W.D. Pa. 1987) (citing *In re Wavelength, Inc.*, 61 B.R. 614, 620 (BAP 9th Cir. 1986)).

Some courts have considers whether the petitioning creditors received poor legal advice when assessing punitive damages where the petitioners did not exhibit malice or ill will. *See In re SBA Factors of Miami Inc.* (“SBA”), 13 B.R. 99, 101 (Bankr. S.D. Fla. 1981) (although petitioners filed in bad faith, assessment of punitive damages would be inefficient deterrent where creditors acted upon poor legal advice). The Court declines to follow *SBA*, and notes that the debts owed to the petitioning creditors were not in dispute. The *SBA* court arrived at its decision based on the specific factual situation presented, which wherein the petitioners merely to establish that the alleged debtor was not paying its debts as they became due. *See SBA*, 13 B.R. at 100. Here, not only did the Petitioners fail to establish that the Alleged Debtor was not paying his debts as

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(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title –

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$15,325 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

11 U.S.C. § 303(b).

they became due, they filed the Involuntary Petition knowing that the underlying claims were disputed in state court and failed to comply with the Court's orders. The record supports a finding that the Petitioners' conduct was willful, and the Petitioners used the Involuntary Petition as a litigation tactic and not to prevent the dissipation of assets. The Petitioners' blatant disregard of the clear requirement set forth in Bankruptcy Code § 303(b)(1) that the debt must not be subject to dispute cannot be blamed on their chosen counsel. See *In re Silverman*, 230 B.R. at 54 ("Even if [petitioner] relied on advice of counsel, he nonetheless filed the petition with knowledge that the superior court had just found that there were genuine issues of material facts as to his claim. . . . If [the petitioner] relied with naïve innocence on his attorney's advice to file an involuntary petition against [the alleged debtor], which this court does not believe, [the petitioner] and his attorneys can deal with the consequences between themselves.") Based on the circumstances surrounding the filing of the Involuntary Petition, a reliance on counsel defense does not serve as a mitigating factor..

Lastly, after reviewing the totality of circumstances and in light of the harm caused by the Involuntary Petition, this Court finds that \$100,000 in punitive damages are reasonable and constitutionally permissible. Here, the Alleged Debtor is not seeking compensatory damages, nor is it necessary to show that the actual harm is compensable. See *In re Atlas Mach. & Iron Works*, 190 B.R. at 804. Nonetheless, there are at least two measures of potential damages making \$100,000 in punitive damages proportionate to the circumstances and the harm caused by the Involuntary Petition. First, Chase Bank closed two of the Alleged Debtor's credit accounts with an aggregate credit limit of \$100,000 and a balance of \$58,004 when it learned of the filing of the Involuntary Petition. See Exhibit A at 3, 22. Second, his credit score declined after the filing of the Involuntary Petition. To support this claim, he introduced evidence showing his April 2017

credit score and testified that it significantly dropped from October 2016. *See* Exhibit A at 3; 04/04/17 Hearing Tr. 17:20-24 (Palmer). The Court gave the Petitioners an opportunity at the Damages Hearing to introduce evidence in support of any mitigating circumstances, and the Petitioners failed to do so. The Court is mindful that in other contexts, the financial circumstances of the party subject to sanctions must be taken into consideration. *See Moxey v. Pryor*, No. 15-CV-4632 (JS), 2017 WL 1229735, at \*5 (E.D.N.Y. Mar. 31, 2017). While a petitioner's net worth is a factor that may be considered in assessing a punitive damages award, it is not a prerequisite to the award. *JRHB*, 291 B.R. at 738. In this case, the Petitioners did not introduce any evidence at the Damages Hearing or raise any issue in their post-hearing submission regarding their net worth. The only mitigating circumstance they raised was their reliance on counsel, which is not sufficient in this case to affect the punitive damages award. Furthermore, \$100,000 in punitive damages are well within the latitude allowed by Supreme Court precedent. *See id.* (citing *Gore*, 517 U.S. at 582) (explaining that the Supreme Court approved punitive damages of more than four times compensatory damages and ten times the potential damages). Given the cancellation of two of his credit cards and the efforts he must undertake to restore his credit score, as well as all of the other circumstances in this case, \$100,000 in punitive damages are appropriate without being unduly oppressive. For those reasons, the punitive damages are reasonable in their amount and rational in their purpose to punish the Petitioners and to deter similar conduct.

### **Equitable Relief under § 303(k)(1)(A) and (2)**

Next, the Alleged Debtor is entitled to equitable relief under § 303(k)(1)(A) sealing the court record relating to the Involuntary Petition, and § 303(k)(2) prohibiting all consumer reporting agencies from making any consumer report which contains any of the foregoing.

Section 303(k)(1) authorizes the sealing of all Court records relating or referring to a dismissed petition if the following four requirements are met: (1) the petition must either be false or must contain some materially false, fictitious, or fraudulent statement, (2) the debtor must be an individual, (3) the case must be dismissed, and (4) the debtor must request the relief. If these requirements are met, relief is mandatory.

Section 303(k)(2) provides that when an involuntary petition is dismissed, a bankruptcy court may prohibit all consumer reporting agencies from making any consumer report that contains any information relating to the petition or the case. Relief is discretionary.

Relief is entirely appropriate here under § 303(k)(1)(A) and (2). The Petitioners filed the Involuntary Petition against an individual, falsely listing their claims as unsecured, as part of a larger effort to force the Alleged Debtor into settling a speculative or validly disputed debt. The Petition should never have been filed.

### **III. Conclusion**

For the reasons above, the Petitioners are liable for \$104,442.33 in attorneys' fees and \$829.16 in costs under § 303(i)(1) and punitive damages in the total amount of \$100,000 under § 303(i)(2). The Alleged Debtor is also entitled to equitable relief under § 303(k)(1)(A) and (2). The Court shall enter an order and judgment consistent with this Memorandum Decision forthwith.

**Dated: Central Islip, New York  
June 22, 2017**



A handwritten signature in black ink, appearing to read "Robert E. Grossman". The signature is written in a cursive style and is positioned above a horizontal line.

**Robert E. Grossman  
United States Bankruptcy Judge**