UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

----------X

IN RE

RODION LUKACH,

Debtor.

----------X

Chapter 13

Case No. 805-89014-478

MEMORANDUM DECISION

A p p e a r a n c e:

The Law Offices of Avrum J. Rosen
Attorneys for Rodion Lukach
By: Fred S. Kantrow, Esq.
38 New Street
Huntington, NY 11743

This matter is before the Court pursuant to a motion made by Rodion Lukach (the "Debtor") seeking the imposition of sanctions against JP Morgan Chase Bank ("Chase") for violating the automatic stay pursuant to former 11 U.S.C. § 362(h).[1] For the reasons set forth herein, the Debtor's motion is granted. The following constitutes the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

FACTS

The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on October 14, 2005. The Debtor's case had been assigned to former Chief Judge Melanie L. Cyganowski and the Court has jurisdiction over this matter. The Debtor was a former employee and officer of Business Applications Outsourcing Technology ("Baotech"), a computer consulting company. In his employment capacity at Baotech, the Debtor assisted Baotech in obtaining credit from various lending institutions including, but not limited to, Chase and Bank One. Chase acquired Bank One and its credit card accounts in mid-2004. Although Baotech was the primary obligor on these obligations, the Debtor agreed to guarantee a number of these obligations. As a result, some of the debts listed on the Debtor's schedules were the primary obligations of Baotech.

Included on the Debtor's Schedule F were debts owed to Chase as follows:

1) Last Four Digits of Account No.: 5713
Description: Chase overdraft line of credit (previously a Bank One account which had been acquired by Chase) (Baotech is listed as co-debtor)
Amount: $26,366.23
Address of creditor listed in petition:

1The Debtor's petition was filed prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Therefore, former § 362(h) applies in this matter. This subsection has been amended by BAPCPA and is now found in subsection (k). The other provisions of the Bankruptcy Code which are applicable to this matter were unchanged by BAPCPA.

528 South Main Street, Akron OH 44301

2) Last Four Digits of Account No.: 4001
Description: small business unsecured loan
Amount: $26,366.23 (listed as contingent, unliquidated and disputed) (previously a Bank One account which had been acquired by Chase) (Baotech is listed as co-debtor)
Address of creditor listed in petition:
528 South Main Street, Akron OH 44301

3) Last Four Digits of Account No.: 4683
Description: business installment loan
Amount: $20,220.81 (listed as contingent, unliquidated and disputed) (Baotech is listed as co-debtor)
Address of creditor listed in petition:
P.O. Box 15902, Wilmington, DE 19850

4) Last Four Digits of Account No.: 7360
Description: credit card
Amount: 15,721.03 (listed as contingent, unliquidated and disputed) (Baotech is listed as co-debtor)
Address of creditor listed in petition:
528 South Main Street, Akron OH 44301

5) Last Four Digits of Account No.: 2560
Description: credit card
Amount: $5,198.51
Address of creditor listed in petition:
P.O. Box 15902, Wilmington, DE 19850

Pursuant to Court notice, creditors listed on the Debtor's petition received notice of the filing and notice that the last date to file proofs of claim in the Debtor's case was April 12, 2006. The Court notice regarding the Debtor's petition and the bar date for filing proofs of claim states that in order to receive payment under the Debtor's plan, the creditor must file a proof of claim, even if the claim is listed on the petition. This notice was served on Chase at P.O. Box 15902, Wilmington, DE, 19850-5902 and on Chase at 528 South Main Street, Akron, OH 44311-1058. The Wilmington, DE address listed by the Debtor on the schedules to the petition and used by the Court for its notices is the address specified by Chase for receipt of all notices in bankruptcy

cases in this District pursuant to Fed. R. Bankr. P. 2002(g). There is no evidence that any of the Court notices sent to Chase were returned for any reason.

The only claims filed relating to debts owed to Chase in the Debtor's case were claim numbers seven, eight and ten. Claim number seven was filed on February 8, 2006 by eCAST Settlement Corp. ("eCAST") with respect to the Chase account number ending in 7360. Claim number eight was filed on February 8, 2006 by Resurgent Capital Services with respect to the Chase account number ending in 2560. Claim number ten was filed on July 6, 2006 by eCAST as an amendment to claim number seven. The Debtor filed a motion seeking to expunge claim number seven. Counsel to eCAST filed an objection to the motion seeking to expunge claim number seven, and after several hearings, eCAST withdrew its opposition to the Debtor's motion. By order dated August 22, 2006, claim number seven was expunged.

As a result, no claims were filed with respect to the following three Chase accounts listed on the Debtor's petition: 1) account number ending in 4001 ("Account 4001"), 2) account number ending in 4683 ("Account 4683") and 3) account number ending in 5713 ("Account 5713") (collectively, the "Outstanding Chase Accounts"). Baotech is listed as a co-debtor with respect to each of the Outstanding Chase Accounts.

The Debtor proposed a plan to pay his creditors, and on November 1, 2005, all creditors listed on the Debtor's schedules received notice of the hearing on confirmation of the Debtor's plan scheduled for March 23, 2006. Chase was served with notice of the hearing on confirmation at the same addresses that they received notice of filing of the petition and the bar date for filing proofs of claim. Thereafter, the Debtor filed an amended plan on August 23, 2006 (the "Plan"). Pursuant to the Plan, all unsecured creditors with timely filed allowed proofs of claim were to receive payment in full without interest. Since Chase had not filed any claims in

the Debtor's case, Chase was not entitled to payment under the Plan with respect to the Outstanding Chase Accounts. By order dated September 29, 2006, the Plan was confirmed without objection. On January 8, 2007, the Debtor's case was reassigned to Hon. Dorothy Eisenberg.

Despite the fact that Chase received notice of the filing of the Debtor's petition, the bar date for filing proofs of claim and the hearing on confirmation of the Plan, Chase did not participate in the Debtor's case with respect to the Outstanding Chase Accounts. Post-petition, Chase sent notices to the Debtor at his home address regarding outstanding pre-petition amounts due on the Outstanding Chase Accounts as follows:

Account 4001:

date of notice - 12/29/05
amount past due - $1,1019.44

date of notice - 1/30/06
amount past due - $1,099.95

date of notice - 5/30/06
amount past due - $1,265.53

Account 4683:

date of notice - 10/28/05
amount past due - $770.76

date of notice - 11/28/05
amount past due - $762.78

date of notice - 12/28/05
amount past due - $765.05

date of notice - 1/28/06
amount past due - $766.15

date of notice – 2/28/06
amount past due - $762.50

date of notice - 5/27/06
amount past due - $756.81

Account 5713:

date of notice - 12/1/05
amount past due - $951.63

date of notice - 1/31/06
amount past due - $943.27

date of notice - 5/31/06
amount past due - $919.16

On April 24, 2006, the Debtor met with his attorney to discuss the notices sent by Chase, and after reviewing these notices along with the petition, counsel to the Debtor determined that Chase was attempting to collect on the Chase Outstanding Accounts. On April 24, 2006 and June 21, 2006, counsel to the Debtor contacted Chase by letter at the address listed in the notices mailed by Chase (P.O. Box 901008, Ft.Worth, TX, 76101-2008) and made a reference to Account 4001. In these two letters, counsel to the Debtor notified Chase of the Debtor's pending bankruptcy case and corresponding bankruptcy case number, and advised Chase to discontinue taking collection actions with respect to that account. Thereafter, Chase continued to send collection notices to the Debtor on this account on October 30, 2006, November 29, 2006 and December 29, 2006. By letter dated March 29, 2007, Chase mailed another notice to the Debtor regarding this account. This time, Chase's mailing address was listed on the notice as P.O. Box 4661, Houston, TX 77210-4661, instead of the Ft. Worth, Texas address previously listed.

On April 24, 2006, counsel to the Debtor also sent a letter to Chase with respect to Account 4683. Pursuant to the letter, counsel to the Debtor advised Chase that the Debtor had filed a petition in bankruptcy, provided the bankruptcy case number, and advised that Chase should cease its collection efforts on that account. This letter was sent to Chase at the Wilmington, DE address Chase has specified for receipt of notices in bankruptcy cases in this District. After receiving another collection letter from Chase on this account dated May 27, 2006, counsel to the Debtor sent a follow-up letter to Chase dated June 21, 2006 directing Chase to cease its collection efforts.

By letter dated June 21, 2006, counsel to the Debtor contacted Chase with respect to Chase Account 5713, advised Chase that the Debtor had filed a petition in bankruptcy, and directed Chase to cease its collection efforts. Counsel to the Debtor sent this letter to Chase at 528 S. Main Street, Akron OH 44301. This was one of the addresses listed for Chase on the Debtor's petition. Counsel to the Debtor represented that he used this address because the post-petition notices sent by Chase on these accounts had no return address on them. With respect to Chase Account 5713, the Debtor received another delinquency notice on July 31, 2006, one month after the Debtor's counsel had sent the latest letter advising Chase to discontinue making collection efforts on this account.

On February 27, 2007, counsel to the Debtor filed the Motion, seeking the imposition of sanctions against Chase pursuant to former 11 U.S.C. § 362(h) based on the actions it took against the Debtor post-petition. The Motion was served on Chase by regular mail at the Ft. Worth, TX address and the Akron, OH address. There is no evidence that the Motion papers sent to Chase were returned for any reason. Chase failed to file a response or appear at the hearing scheduled for March 13, 2007. The Court heard the Motion, and determined that Chase

had violated the automatic stay, and scheduled a hearing to determine the amount of sanctions, if any, to be awarded in favor of the Debtor against Chase.

Counsel to the Debtor settled a proposed order providing that the Motion was granted in part, and that a hearing on the amount of sanctions to be awarded was scheduled for April 12, 2007 at 11:00 a.m. Chase was served with the proposed order at the Fort Worth, TX address and at the Akron, OH address by certified mail. Both of the certified mail return receipts reflect parties signed for and accepted the envelopes containing the proposed order. Once again, Chase failed to appear at the hearing to determine the proper amount of sanctions, if any, to be assessed against Chase. At the hearing held on April 12, 2007, the Court took testimony from the Debtor, who testified regarding Chase's repeated mailings to the Debtor post petition. The Court examined the original letters sent by Chase post petition on the Outstanding Chase Accounts, and the matter was marked submitted. After the hearing, counsel to the Debtor provided the Court with detailed time records and expenses, and an affidavit setting forth a description of work performed relating to the Motion. In sum, counsel to the Debtor seeks entry of an order awarding counsel fees in the amount of $3,700.00, expenses in the amount of $12.98, and punitive damages in the amount of $5,000.00 for each violation of the automatic stay.

DISCUSSION

Section 362(a) of the Bankruptcy Code provides an automatic stay of litigation, lien enforcement and other actions that are attempts to collect pre-petition debts. Section 362(a) (6) of the Bankruptcy Code expressly stays any action to collect, assess or recover a pre-petition debt from a debtor. In enacting § 362, Congress clearly understood the essential nature of this provision:

> The automatic stay 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.R. Rep. No. 595, 95th Cong., 1st Sess. 340-342 (1977); S. Rep. No. 989, 95th Cong.2d Sess.54-44 (1978); *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787 at 5840 and 6296-97. To act in violation of the automatic stay is to undermine the cornerstone of the bankruptcy process. It is clear that Chase violated this provision as to each of the Outstanding Chase Accounts by virtue of the numerous letters sent to the Debtor post-petition. Chase did so despite having been served with notice of the petition at the address chosen by Chase in this District. Chase had notice, and therefore, actual knowledge, of the Debtor's petition, the bar date, and the hearing on confirmation of the Plan. *In re Robinson,* 228 B.R. 75, 84 (Bankr. E.D.N.Y. 1995) (receipt of notice of the bankruptcy sent by the clerk of the court is sufficient for a court to find that a creditor has actual knowledge of the bankruptcy filing). Chase continued to act in violation of the automatic stay after receiving such notices from the Court, and after receiving several letters from counsel to the Debtor advising Chase that the Debtor filed a bankruptcy petition.

Chase had an obligation under § 362 of the Bankruptcy Code to take the appropriate action to discontinue its collection efforts against a debtor. *In re Wright,* 328 B.R. 660, 663 (Bankr. E.D.N.Y. 2005) (citing *Sucre v. MIC Leasing Corp. (In re Sucre)*, 226 B.R. 340, 347 (Bankr. S.D.N.Y. 1998)). Chase's failure to do so was in clear violation of the automatic stay, which violation continued well after the Debtor's petition was filed, and after the Debtor's counsel sent several letters to Chase pointing out the existence of the automatic stay.

Former § 362(h) of the Bankruptcy Code provides:

(h) An individual injured by any *willful violation* of a stay ... *shall recover actual damages,* including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362(h) (emphasis added).

Any deliberate act taken by a creditor that violates the automatic stay may be subject to an award of actual damages. There is no requirement that the creditor acted maliciously or in bad faith. *In re Robinson,* 228 B.R. at 80-81, *citing Crysen/Montenay Energy Co. v. Esselen Associates, Inc. (In re Crysen/Montenay Energy Co.),* 902 F.2d 1098, 1105 (2d Cir. 1990). The words "shall recover" indicate that Congress intended that the award of actual damages, costs and attorney's fees be mandatory upon a finding of a willful violation of the stay. *In re Taylor,* 884 F.2d 478, 483 (9th Cir. 1989); *In re Sansone,* 99 B.R. 981, 987 (Bankr. C.D. Cal. 1989).

In assessing damages, the Court may award attorneys' fees pursuant to former § 362(h) of the Bankruptcy Code even if that is the only harm suffered by the Debtor. *In re Robinson*, 228 B.R. at 85 (citing *In re Sumpter,* 171 B.R. 835, 845 (Bankr. N.D. Ill. 1994) and *Bank of Boston v. Baker (In re Baker)*, 140 B.R. 88, 90 (D. Vt. 1992)). In this case, counsel to the Debtor seeks an award of $3,700.00 for legal fees incurred in connection with the prosecution of this matter, plus $12.98 in expenses.

Courts fixing an award under this provision of the Bankruptcy Code are to consider whether the fees requested are reasonable and necessary. *In re Wright,* 328 B.R. at 664. The reasonableness of the request is considered to ensure that attorneys do not incur large legal fees with the intention of shifting the responsibility for payment of the fees to their adversaries. *In Re Robinson,* 228 B.R. at 85 (citing *Price v. Pediatric Academic Assoc., Inc.,* 175 B.R. 219, 221

(S.D. Ohio 1995), *on remand*, *In re Price*, 179 B.R. 70 (Bankr. S.D. Ohio 1995)). The Court has reviewed the fees requested by counsel to the Debtor, including the itemized statement of work performed in connection with the Motion. Fred Kantrow, Esq., an associate at the law firm of Avrum J. Rosen, Esq., handled this matter at an hourly rate of $250.00. A total of 14.8 hours were spent by Mr. Kantrow on this matter, and the time entries appear to be appropriate given the nature of the issues raised by Chase's actions. The expenses total $12.98 for postage and service charges. The Court finds that the fees and expenses requested are reasonable and appropriate given the time spent on this matter. It does not appear that unnecessary costs were incurred in connection with the Motion. Counsel to the Debtor attempted to settle the matter before bringing on the Motion, and only sought the Court's intervention after Chase continued to ignore counsel's letters.

The Court may also award punitive damages where appropriate. Some courts use the following factors to make such determination:

1) the nature of the party's conduct;
2) the party's ability to pay damages;
3) the motive of the party; and
4) any provocation by the debtor.

In re Diviney, 211 B.R. 951, 968 (Bankr. N.D. Okla. 1997) (citing *In re B. Cohen & Sons Caterers, Inc.,* 108 B.R. 482, 487088 (E.D. Pa. 1989) (other citations omitted)). Other courts require a finding that the party acted "with actual knowledge that [the party] was violating the federally protected right or with reckless disregard of whether he was doing so." *In re Diviney,* 211 B.R. at 968 (citing *In re Fry,* 122 B.R. 427, 431 (Bankr. N.D. Okla. 1990) (other citations omitted)). Under either test, the actions of Chase justify an award of punitive damages. Chase is a giant in the credit industry, and had ample notice of the Debtor's petition. Chase has

specifically provided an address for notice in all bankruptcy cases in this District, and received notice of this case. Although Chase initially appeared to be acting carelessly in connection with the Debtor's case, Chase continued its collection efforts after receiving the letters from counsel to the Debtor. It was Chase's decision to ignore the automatic stay imposed by § 362 of the Bankruptcy Code and to continue to contact the Debtor, even after receiving letters from the Debtor's counsel directing Chase to cease violating the automatic stay. Chase's actions in this case, coupled with its failure to appear at either of the hearings before the Court, justifies the imposition of sanctions in this matter.

In considering the appropriate amount of punitive damages to assess against Chase, the Court notes that the purpose of awarding punitive damages is to deter Chase and other lenders of the same type from engaging in conduct which violates the automatic stay. *In re Kaiser,* 158 B.R. 808 (Bankr. D. Neb.1993). The Court is also mindful of the fact that although the notices sent by Chase are not so egregious as to warrant the imposition of an overly large punitive damage award, the notices constitute willful violations of the automatic stay, and they have caused the Debtor to incur additional expenses and personal distress. The Court finds that punitive damages in the amount of $5,000.00 are appropriate, and in the event Chase takes any further actions to collect from the Debtor with respect to the Outstanding Chase Accounts, Chase shall be sanctioned at $2,500.00 per each occurrence.

CONCLUSION

1. The Court has jurisdiction over this matter pursuant to 28 U.S. C. § 1334(a) and (b). This Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

2. Chase had notice of the Debtor's bankruptcy filing.

3. Chase acted in violation of the automatic stay when it failed to cease collection efforts against the Debtor as to the Outstanding Chase Accounts, which were listed on the Debtor's schedules. Chase continued to act in violation of the automatic stay even after receiving letters from counsel to the Debtor advising Chase of the Debtor's petition. Therefore, its actions were willful.

4. Pursuant to former 11 U.S.C. § 362(h), an award of actual damages in the amount of $3,700.00 in fees and $12.98 in expenses is appropriate and reasonable.

5. Chase's conduct warrants the imposition of punitive damages in the amount of $5,000.00. Should Chase attempt to collect from the Debtor on the Outstanding Chase Accounts after entry of an order regarding this memorandum decision, Chase shall be liable for payment to the Debtor the sum of $2,500.00 per each occurrence.

Settle an order in accordance with this decision on Chase at the addresses listed on the Debtor's petition and the addresses on the letters sent by Chase to the Debtor post-petition.

Dated: Central Islip, New York
May 8, 2007

By: ***/s/ Dorothy Eisenberg***
Dorothy Eisenberg
United States Bankruptcy Judge