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

IN RE:	)	
	)	
BRANDE L. DUNN,	)	Bankruptcy Case No. 99-60681
	)	
Debtor.	)	

OPINION

The issue before the Court is whether Creditor, NCO Financial Systems, Inc., as Collectors for Baltic Emergency Physicians, as billing department for St. Anthony's Hospital, should be sanctioned for attempting to collect a debt in violation of the automatic stay provisions of 11 U.S.C. § 362. Judge Larry Lessen, in In re Martin, Case No. 97-71599 (Bankr. C.D. Ill. 1997), explained the purpose of the automatic stay as follows:

> The automatic stay is a basic protection afforded to debtors, and its scope is intended to be broad. Checkers Drive-In Restaurants, Inc. v. Commissioner of Patents and Trademarks, 51 F.3d 1078 (D.C. Cir. 1995), *cert. denied* 116 S.Ct. 182 (1995); Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194 (3d Cir. 1991), *reh'g granted and opinion vacated* (1992), *opinion reinstated on reh'g* (1992), *reh'g denied* (1992); Small Business Administration v. Rinehart, 887 F.2d 165 (8th Cir. 1989); In re Stringer, 847 F.2d 549 (9th Cir. 1988). As soon as the bankruptcy petition is filed, the automatic stay provisions take effect. Matter of Vitreous Steel Products Co., 911 F.2d 1223 (7th Cir. 1990), *reh'g denied* (1990); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522 (2d Cir. 1994). The automatic stay gives the bankruptcy court the opportunity to harmonize the interests of both debtors and creditors while preserving a debtor's assets for repayment and reorganization of his or her obligations. In re Mac Donald,

> 755 F.2d 715 (9th Cir. 1985). The automatic stay also serves to protect the debtor's estate from being eaten away by creditors' lawsuits and seizures before the trustee has had an opportunity to marshal the estate's assets and to distribute them equitably among the creditors. In re Nelson, 994 F.2d 42 (1st Cir. 1993). Another fundamental purpose of the automatic stay is to protect the debtor from actions by his creditors. In re Martin, 162 B.R. 710 (Bankr. C.D. Ill. 1993).

The Debtor, Brande L. Dunn, filed her Petition for Relief Under Chapter 7 of the Bankruptcy Code on August 18, 1999, thereby triggering the automatic stay. The Debtor was indebted at the time of filing her petition to the Creditor, Baltic Emergency Physicians, through St. Anthony's Hospital. The Debtor included the subject debts on her petition. The record indicates that the Creditor received notice of the bankruptcy filed by the Debtor and the hearing on the Debtor's Motion for Sanctions, filed on November 10, 1999, and heard by this Court on December 3, 1999. The Creditor did not respond to the Motion for Sanctions and did not appear at the hearing, nor did counsel appear on its behalf. The Debtor appeared at the hearing, with counsel, and testified and offered Exhibit Nos. 1 through 6 into evidence. The exhibits were all admitted.

After hearing the Debtor's testimony and reviewing her exhibits, the Court concludes that this is not a complicated matter. The Creditor received notice of the Debtor's bankruptcy, but nonetheless attempted to collect the debt. The Creditor or its collection agency, NCO Financial Systems, Inc., began contacting the Debtor by writing on

September 23, 1999, (Exhibit No. 1), over a month after the Debtor filed her petition, in an effort to collect the debt. The Creditor wrote to the Debtor again on October 2, 1999 (Exhibit No. 2), and October 23, 1999, three notices (Exhibit Nos. 3, 4, and 5), and attempted to collect the debt. The Debtor testified that one collection letter was sent to her grandfather at a different address. (Exhibit No. 3). The Debtor testified that her grandfather is nearly 80 years old and became upset and confused because of the collection letter. The Debtor testified that, upon receipt of each collection letter, she called Baltic Emergency Physicians or NCO Financial Systems, Inc. and reported that she had filed for bankruptcy, and gave her case number and her attorney's name, address and telephone number. The Debtor was a credible witness. Debtor's attorney wrote to the Creditor on October 13, 1999, (Exhibit No. 6), and also stated that the Debtor was in bankruptcy and that collection efforts had to cease or that contempt proceedings would be initiated. The attorney's attempt to stop the collection effort did not work because the Creditor made three more written attempts to collect on the debt.

The Court finds by a preponderance of the evidence that the Creditor's conduct resulted in a willful violation of the automatic stay provisions of 11 U.S.C. § 362. Attorney fees are mandatory when there has been a willful violation of the automatic stay. In re Martin, supra, at 6. The Court finds that attorney fees of $200 are

appropriate. In this case, the Debtor notified the Creditor by telephone that she had filed for bankruptcy each time she received a demand for payment, and gave her bankruptcy case number and her attorney's name, address, and telephone number. She also had to attend the hearing on this matter and testify. The Court finds that the Debtor is entitled to compensatory damages of $400.

In some instances, punitive damages for willful violations of the automatic stay are appropriate. Judge Larry Lessen, in In re Martin, supra, sets out the standards as follows:

> Punitive damages for willful violations of the automatic stay are appropriate where the creditor's conduct is particularly egregious. In re Sumpter, supra 171 B.R. at 845. In determining whether punitive damages are appropriate, the Court looks at (1) the nature of the creditor's conduct, (2) the creditor's ability to pay damages, (3) the creditor's motive, and (4) any provocation by the debtor.

In this case, the question of whether the Debtor is entitled to punitive damages is close. The evidence is clear that the Creditor attempted to collect the debt even though it had actual notice of the bankruptcy, and the Debtor contacted the Creditor each time she received a collection notice. Furthermore, the Creditor made additional written collection efforts after it received written notice of the bankruptcy from Debtor's counsel. The law is clear that there is an affirmative duty on the part of one who violates the automatic stay to undo the violation without unreasonable delay, or face sanctions as a consequence. In re Martin, supra, at 5.

The Court concludes that, since it has found compensatory damages for the Debtor and attorney fees, punitive damages are unnecessary in this case.

For the foregoing reasons, the Court finds that the Creditor, NCO Financial Systems, Inc., as Collectors for Baltic Emergency Physicians, as billing department for St. Anthony's Hospital, violated the automatic stay provisions of 11 U.S.C. § 362, and that actual damages of $400 and attorney fees of $200 should be awarded to the Debtor.

This Opinion is to serve as findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. See written Order.

ENTERED: December 8, 1999.

/s/ GERALD D. FINES
United States Bankruptcy Judge