



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 01, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 17-14004-MKN
)	Chapter 7
DEAN TYLER BUSH,)	
)	Date: February 26, 2019
Debtor.)	Time: 9:30 a.m.
)	

**MEMORANDUM DECISION ON MOTION FOR SANCTIONS
FOR INTENTIONAL VIOLATION OF THE AUTOMATIC STAY
AND DISCHARGE INJUNCTION¹**

On February 26, 2019, an evidentiary hearing was conducted on Motion for Sanctions for Intentional Violation of the Automatic Stay and Discharge Injunction (“Sanctions Motion”) brought by Dean Tyler Bush (“Debtor”) in the above-captioned case. The appearances of counsel were noted on the record. After conclusion of the hearing, the matter was taken under submission. This Memorandum Decision constitutes the court’s findings of fact and conclusions of law pursuant to FRBP 7052 and FRCP 52.

BACKGROUND

On July 25, 2017, Debtor filed a voluntary Chapter 7 bankruptcy petition along with his schedules of assets and liabilities, Statement of Financial Affairs, and other required information. (ECF No. 1). The bankruptcy petition was prepared and filed on the Debtor’s behalf by Jennifer

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRCP” are to the Federal Rules of Civil Procedure.

1 Isso of the Isso and Hughes Law Firm (“Attorney Isso”).

2 On October 24, 2017, an order was entered granting Debtor his Chapter 7 discharge.
3 (ECF No. 19).

4 On October 27, 2017, a Final Decree was entered discharging the assigned Chapter 7
5 trustee of any further duties and closing the case. (ECF No. 21).

6 On June 29, 2018, Debtor filed a motion to reopen his Chapter 7 case (“Reopening
7 Motion”). (ECF No. 22).

8 On July 2, 2018, an order was entered reopening the case. (ECF No. 24).

9 On August 24, 2018, the instant Sanctions Motion was filed by Debtor, and noticed to be
10 heard on October 3, 2018. (ECF Nos. 25 and 26).

11 On October 1, 2018, an opposition to the Sanctions Motion (“Opposition”) was filed by
12 Las Vegas Hospitalists (“LVH”). (ECF No. 30). At the October 3 hearing, the matter was
13 continued to October 17, 2018, to permit a response to be filed by the Debtor.

14 On October 9, 2018, Debtor filed a reply to the Opposition. (ECF No. 32).

15 On October 17, 2018, the Sanctions Motion was heard and taken under submission.

16 On October 19, 2018, an order was entered denying sanctions for an alleged violation of
17 the automatic stay, but granting sanctions for violation of the discharge injunction (“Preliminary
18 Order”). (ECF No. 33). The order also scheduled a status conference for November 14, 2018,
19 for the purpose of setting an evidentiary hearing limited to the amount of damages and attorney’s
20 fees sought by the Debtor (“Evidentiary Hearing”).

21 On December 17, 2018, an order was entered scheduling the Evidentiary Hearing for
22 February 26, 2019, and setting a pretrial conference for February 13, 2019. (ECF No. 42).

23 On February 13, 2019, the pretrial conference was completed.

24 **THE EVIDENTIARY RECORD**

25 The evidence admitted at the hearing consists of the alternate direct testimony affidavit of
26 the Debtor (Trial Exhibit 10), the Debtor’s live testimony on cross-examination and re-direct
27 examination concerning the affidavit, copies of seven post-discharge collection letters received
28 by the Debtor (Trial Exhibits 1, 2, 3, 4, 5, 6, and 7), and two separate declarations from Attorney

1 Isso attaching billing invoices for her services related to the Sanctions Motion. (Trial Exhibits 8
2 and 13). LVH filed an “Evidentiary Trial Brief Including Supporting Declarations” prior to the
3 hearing (“LVH Trial Brief”) (ECF No. 48), but none of the exhibits accompanying that
4 document were offered or admitted into evidence.²

5 DISCUSSION

6 In the Preliminary Order, the court stated, in pertinent part, as follows:

7 Based on the foregoing, the court concludes that the Debtor has met his burden by
8 clear and convincing evidence that contempt sanctions for violation of the
9 discharge injunction are appropriate. The evidentiary record establishes that the
10 violation occurred from January 2018 through July 2018, i.e., a seven-month
11 period. Compensatory damages, if any, proximately caused during that period
12 will be considered as well as any reasonable attorney’s fees incurred. A
13 determination of any request for attorney’s fees under a “lodestar” standard will
14 require the submission of contemporaneously maintained hourly fee statements.

15 Preliminary Order at 7:13-19 (footnotes omitted).

16 Compensatory damages for violation of the discharge injunction can include emotional
17 distress, lost future earning capacity, medical expenses incurred, lost wages, and other forms of
18 general and special damages. See, e.g., In re Martinez, 561 B.R. 132, 157-58 (Bankr. D. Nev.
19 2016). In the instant matter, the Debtor has offered no evidence of lost earning capacity, medical
20 expenses, lost wages, or any other general or quantifiable consequence from the discharge
21 violation.³ He testified in his alternate direct testimony affidavit, however, that he suffered
22 “from anxiety, stress, paranoia, and depression,” that he “over-ate and...was distracted,” and that
23 he was “worried about falling behind on his bills again.” See Amended Affidavit of Dean Bush,
24 at ¶¶ 25, 26, 27, 28 (Trial Exhibit No. 10).

25 ² At the start of the Evidentiary Hearing, Attorney Isso made an oral motion in limine to
26 strike the document, but it was overruled. In spite of that outcome, LVH never offered the
27 document or its attachments, nor any of the exhibits it marked prior to the hearing, into evidence.

28 ³ In responding to the discharge violation, Debtor asserted that he incurred “the costs
associated with driving back and forth to his attorney’s office (e.g., gas and mileage), the use of
his cell phone minutes and battery during debt collection calls and to place calls to his attorney
regarding those efforts.” Sanctions Motion at 11:5-9. No evidence to establish such expenses
was provided, however, in the Debtor’s affidavit admitted at trial, nor in his live testimony.
Moreover, no receipts or documents reflecting such expenses were admitted into evidence.

1 In addition to a claimant's testimony, damages for emotional distress may be proven
2 through the admission of testimony from family members, friends, and treating physicians, as
3 well as through medical records and other evidence to corroborate the claimant's assertion of
4 personal harm. See America's Servicing Co. v. Schwartz-Tallard, 438 B.R. 313, 321 (D.Nev.
5 2010)(determination of emotional distress damages for violation of the automatic stay). In
6 Marino v. Ocwen Loan Servicing, LLC (In re Marino), 577 B.R. 772 (B.A.P. 9th Cir. 2017), the
7 appellate court observed:

8 The Ninth Circuit has allowed emotional distress damages for automatic stay
9 violations when the debtor "(1) suffer[s] significant harm, (2) clearly establish[es]
10 the significant harm, and (3) demonstrate[s] a causal connection between that
11 significant harm and the violation of the automatic stay (as distinct, for instance,
from the anxiety and pressures inherent in the bankruptcy process)."...The same
rule should apply to violations of the discharge injunction.

12 Id. at 787 (citations omitted; emphasis added).

13 Cross-examination of the Debtor regarding his written testimony revealed only that the
14 violation was stressful. Re-direct examination of the Debtor offered nothing more. No
15 testimony was presented from any family members, although the Debtor had listed his mother as
16 a possible witness. She did not appear to testify, however, and no friends or acquaintances
17 testified as to changes in the Debtor's mood or behavior. No professional testified as to the
18 Debtor's alleged paranoia and depression. No medical records were admitted evidencing the
19 Debtor's examination, diagnosis or treatment for such conditions. No evidence was offered that
20 the Debtor was prescribed, or is taking, medication to treat such maladies. Moreover, Debtor
21 never testified either in writing or at the hearing that he had received treatment, was continuing
22 to receive treatment, or was still experiencing any of his alleged afflictions.

23 Under these circumstances, the court concludes that the Debtor has failed to demonstrate
24 a significant harm, to clearly establish the existence of a significant harm, or to prove a causal
25 connection between the discharge violations and his alleged emotional distress. Compensatory
26 damages, therefore, will not be awarded.

27 As the court previously concluded, however, LVH had knowledge that the underlying
28 medical debt had been discharged and intentionally violated the discharge injunction by sending

1 the subsequent billing statements. See Preliminary Order at 3:18 to 7:12. Even at the
2 Evidentiary Hearing, and despite the court’s conclusion that it violated the discharge injunction,
3 LVH continued to suggest, irrelevantly, that it did not have notice of the Debtor’s bankruptcy
4 case and, therefore, should not be sanctioned. See LVH Trial Brief at 5:7-9 and 10:13-27.
5 LVH’s lack of notice of the Debtor’s bankruptcy filing does not excuse its actual knowledge of
6 the Debtor’s bankruptcy discharge. Whatever may be the source of its fundamental
7 misunderstanding of bankruptcy law, LVH’s unwillingness to even acknowledge the effect of a
8 bankruptcy discharge suggests that it will continue to ignore the law in the future. Accordingly,
9 a relatively mild, non-compensatory fine of \$5,000.00 will be imposed on LVH to deter similar
10 conduct in the future. That fine will be payable to the Debtor.

11 Unfortunately, the overriding focus of this proceeding has been the attorney’s fees sought
12 in connection with the Sanctions Motion. In his initial affidavit accompanying the Sanctions
13 Motion, Debtor attested that he had incurred \$19,500 in attorney’s fees in response to LVH’s
14 post-discharge collection efforts. See Affidavit of Dean Bush at ¶ 28.⁴ Debtor’s inclusion of this
15 amount in an overall request for \$95,500 in aggregate sanctions, see Sanctions Motion at 11:13-
16 17, triggered LVH’s outrage at the practices of Attorney Isso, her qualifications and experience,
17 and the time she billed to the Debtor in connection with this matter. See Opposition at 2:21 to
18 3:11 and 14:12-23. Almost all of the written argument prior to the Evidentiary Hearing was
19 devoted to questioning the amount of attorney’s fees that should be awarded. See LVH Trial
20 Brief at 2:3 to 10:11; 12:6 to 19:20.

21 Debtor has submitted two declarations from Attorney Isso in support of his attorney fee
22 request. Trial Exhibit “8” was admitted into evidence and is a copy of a Declaration of Jennifer
23 Isso, Esq., that previously was filed on November 28, 2018 (“First Isso Declaration”). (ECF No.
24 39). In that declaration, Attorney Isso clarified that she had billed attorney’s fees and costs of
25 \$13,272.00 as of the date of the declaration, reflected in an attached invoice of the same date
26 (“November 28 Invoice”). Trial Exhibit “13” also was admitted into evidence and consists of a

27 ⁴ That affidavit is attached as Exhibit “1” to the Sanctions Motion. At the Evidentiary
28 Hearing, an exhibit was marked that incorporated the same affidavit, but it was never admitted
into evidence.

1 Supplemental Declaration of Jennifer Isso, Esq., that was not previously filed in the case
2 (“Second Isso Declaration”). Attached to that supplemental declaration is an invoice dated
3 February 18, 2019 (“February 18 Invoice”), showing a total amount of attorney’s fees and costs
4 of \$25,682.50. It is the latter amount that the Debtor seeks to recover from LVH for prevailing
5 on his Sanctions Motion.

6 An award of attorney’s fees is warranted in this matter because LVH continued to violate
7 the Debtor’s discharge even after acknowledging that the medical debt had been discharged.
8 According to the evidence admitted at the Evidentiary Hearing, the last billing statement sent by
9 LVH is dated 08/02/18 and no further billing statements were sent after the Sanctions Motion
10 was filed by Attorney Isso on August 24, 2018.

11 Under the customary lodestar approach, the award of attorney’s fees in bankruptcy
12 matters is based on determining whether the services were performed at a reasonable hourly rate
13 and in a reasonable amount of time. See Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592,
14 598 (9th Cir. 2006). See, e.g., Desert Pine Villas Homeowners Ass’n v. Kabling (In re
15 Kabling), 551 B.R. 440 (B.A.P. 9th Cir. 2016)(affirming award of \$3,658.00 in attorney’s fees,
16 rather than \$6,855.00 in fees requested, for violation of an individual debtor’s discharge); In re
17 Hiep Manh Tran, Case No. 09-19696-LED, Docket No. 91, Order Awarding Damages, entered
18 July 31, 2015 (awarding \$16,000.00 in attorney’s fees, rather than \$32,649.00 in fees requested,
19 for violation of an individual debtor’s discharge). Applying the lodestar approach, the court
20 concludes that the attorney’s fees requested by the Debtor are clearly excessive for a variety of
21 reasons.

22 First, the accuracy of the invoices submitted by counsel is suspect. The court previously
23 directed counsel to submit “contemporaneously maintained hourly fee statements” for the
24 requested fees to be determined. See Preliminary Order at 7:19. A comparison between the
25 November 28 Invoice and the February 18 Invoice, however, reveal significant discrepancies.
26 One obvious discrepancy is a time entry for 08/21/2018 reflecting 2.50 hours to “Draft
27 Declaration of Dean Bush” that appears on the February 18 Invoice, but does not appear in the
28 November 28 Invoice. An even more obvious and perhaps more serious discrepancy appears

1 from the February 18 Invoice: it includes multiple time entries for services allegedly performed
2 from 02/19/2019 through 02/26/2019. In other words, the February 18 Invoice includes services
3 that could not have been performed as of the date of its creation. Although Debtor's counsel
4 explained in her earlier declaration that the law firm had "recently adopted the industry-standard
5 Clio computer system for tracking billable hours," see First Isso Declaration at ¶ 9, this does not
6 explain how a billing system that generates invoices for services that have yet to be performed
7 can be reliable.

8 In addition to these internal discrepancies, it appears that both invoices may inaccurately
9 reflect the date that Attorney Isso's services were rendered. For example, the Sanctions Motion
10 itself includes an electronic signature from Attorney Isso that allegedly occurred on "this 10th
11 day of July 2018." See Sanctions Motion at 11:18-25. According to both the November 28
12 Invoice and the February 18 Invoice, Attorney Isso commenced drafting the Sanctions Motion on
13 07/10/2018, but did not finalize the document until 08/19/2018. In fact, the Sanctions Motion
14 was not filed with the court until August 24, 2018. Attorney Isso either signed the Sanctions
15 Motion at a later date, or the Sanctions Motion was prepared and finalized at a much earlier
16 date.⁵ Something is wrong. Because of these discrepancies, it appears that the invoices provided
17 by counsel might not have been prepared contemporaneously with the services performed.

18 Second, the contents of the invoices reflect multiple time entries at Attorney Isso's hourly
19 rate for non-legal services. Obvious examples are time spent by Attorney Isso to drive to court,
20 to download a Bates-stamp program,⁶ and to deliver binders to the court. Services that were

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22 ⁵ Moreover, the affidavit of the Debtor filed with the Sanctions Motion is signed and
23 notarized as of August 6, 2017. As the court previously noted, that affidavit included another
24 billing statement from LVH dated August 7, 2017. See Preliminary Order at 5 n.7. Both the
25 November 28 Invoice and the February 18 Invoice include an entry of 08/19/2018 to "Finalize
Declaration of Dean Bush." It is not clear how an attorney can contemporaneously bill for
services to finalize an affidavit after the affidavit was already signed under oath.

26 ⁶ The billing entry presumably refers to the "Bates" stamp program commonly used in
27 legal matters to mark documents with uniquely identifiable page numbers, in order to avoid
28 confusion with other documents. The court is curious how any law firm could bill a specific
client for the time spent installing a program that presumably can be used in providing services
to other clients.

1 charged to the Debtor, but which should have been born by counsel, included various
2 communications in which Attorney Isso apparently attempted to arrange co-counsel to assist in
3 the prosecution of the Sanctions Motion. Services that were simply clerical in nature also are
4 included, such as time spent filing, scanning, or emailing documents. These are the types of
5 tasks for which no legal training is required and which should be included in overhead.

6 Third, a substantial portion of the Sanctions Motion was devoted to seeking damages for
7 an automatic stay violation that clearly did not occur. All of the improper conduct committed by
8 LVH occurred in 2018, well after the Debtor received his discharge and after the Chapter 7 case
9 was closed. This was well known to counsel because the Reopening Motion had to be filed prior
10 to the Sanctions Motion. Even a basic understanding of consumer bankruptcy law, however,
11 would include knowledge that the automatic stay terminates for an individual debtor when a case
12 is closed or a discharge is entered. See 11 U.S.C. § 362(c)(2)(A and C). Yet, counsel for the
13 Debtor sought sanctions under Section 362(k), see Sanctions Motion at 4:20-23 and 7:6-22, and
14 counsel for LVH failed to even raise that the automatic stay had already terminated before his
15 client's alleged conduct occurred. See LVH Opposition at 7:21 to 9:7.⁷

16 Attorney Isso billed a significant amount of time researching, drafting and finalizing the
17 Sanctions Motion, along with declarations from the Debtor, and much of that time appears to
18 have been devoted to a misguided claim under Section 362(k). The invoices reflect that Attorney
19 Isso engaged in significant discovery after the Preliminary Order was entered, but the invoices
20 do not specify whether that discovery related to the automatic stay claim. Copies of the
21 discovery documents were never offered into evidence. More important, Attorney Isso makes no
22 effort to allocate between the alleged automatic stay violation and the discharge violation, the
23 "approximately 60 hours" she allegedly spent on the Sanctions Motion. See Second Isso
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27 ⁷ LVH could have sought sanctions under FRBP 9011 with respect to the claim under
28 Section 362(k) because it had no basis in fact or law at the time the Sanctions Motion was filed.
LVH did not do so.

1 Declaration at ¶ 2.⁸ It does not help, of course, that counsel for LVH improvidently continued to
2 dwell on whether LVH was scheduled as a creditor. See LVH Trial Brief at 5:7-9.

3 Fourth, charging approximately 60 hours of an attorney's time for an uncomplicated
4 discharge sanctions motion is excessive. The multiple charges for tasks that are not compensable
5 at an attorney's hourly rate are mentioned above. The expenditure of substantial time on an ill-
6 advised automatic stay theory also is discussed above. The expenditure of time to respond to
7 LVH's equally ill-advised opposition is further discussed above. Once the Preliminary Order
8 was entered determining liability for the discharge violation, resolution of the dispute should
9 have been simple but for the cacophony regarding Attorney Isso's practices and billings.
10 Unfortunately, what should have been a relatively straightforward discharge violation motion
11 ended up in an Evidentiary Hearing that shed little light on the primary factual issue: the impact
12 of the violation on the Debtor. Based on this record, the court initially will allow 15 hours for
13 Attorney Isso's services to prepare and prosecute the Sanctions Motion, but will increase that to
14 a total of 20 hours due to the misguided response from LVH.

15 Finally, the \$395.00 hourly rate charged by Attorney Isso also is excessive based on the
16 record before the court. While that hourly rate apparently is the same rate that counsel charges in
17 other bankruptcy matters, see Second Isso Declaration at ¶ 5, she is free to set her hourly rate
18 according to what her clients are willing to pay. If Attorney Isso wants to charge a \$500.00 flat
19 fee for a simple Chapter 7 case, see LVH Trial Brief at 2:3, she is free to market her services in
20 that fashion. This is not the situation, however, when an attorney's fees must be approved by a
21 court under the lodestar approach. Instead, the court determines on a case by case basis whether
22 the services performed by counsel were completed in a reasonable amount of time at a
23 reasonable hourly rate.

24 The court already has determined that the number of hours billed by Attorney Isso was
25 excessive. This was largely due to an apparent lack of understanding of when the automatic stay
26 terminates, which is rudimentary to bankruptcy practice. The inclusion of non-legal services at
27

28 ⁸ According to the February 18 Invoice, Attorney Isso billed approximately 30.6 hours
prior to the entry of the Preliminary Order.

1 an attorney's hourly rate also contributed to that determination. Combined, these determinations
2 also suggest that the hourly rate charged in connection with the instant Sanctions Motion exceeds
3 the quality of the services provided. Because a significant reduction in allowable hours as well
4 as a significant reduction in the hourly rate would be punitive, the court concludes that a modest
5 reduction in Attorney Isso's hourly rate in the instant matter is appropriate. Therefore, the court
6 concludes that an hourly rate of \$325.00 should be allowed.

7 Based on 20 hours at a \$325.00 rate, the court will award attorney's fees of \$6,500.00
8 resulting from LVH's violation of the Debtor's discharge. Reimbursement of costs for the
9 \$260.00 reopening fee paid by counsel will be allowed. None of the other expenses set forth in
10 counsel's invoices are allowed.⁹

11 **IT IS THEREFORE ORDERED** that the findings and conclusions set forth in the
12 Order on Motion for Sanctions entered October 19, 2018, as Docket No. 33, are incorporated
13 herein by reference.

14 **IT IS FURTHER ORDERED** that respondent Las Vegas Hospitalists shall pay the
15 amount of \$5,000.00 to the above-captioned debtor, Dean Tyler Bush, as a non-compensatory
16 fine.

17 **IT IS FURTHER ORDERED** that respondent Las Vegas Hospitalists shall pay the
18 amount of \$6,760.00 to counsel for Dean Tyler Bush, as attorney's fees and costs.

19 **IT IS FURTHER ORDERED** that respondent Las Vegas Hospitalists shall pay the
20 amounts required by this Order, in certified funds, no later than April 1, 2019. Such certified
21 funds must be received by counsel for Dean Tyler Bush no later than such deadline.

22 **IT IS FURTHER ORDERED** that counsel for Dean Tyler Bush must file and serve a
23 statement acknowledging receipt of such payments no later than five business days after receipt.

24 Copies sent via CM/ECF ELECTRONIC FILING
25
26

27 _____
28 ⁹ Each of the other expense items appear to be charged as quantities of "1.00" when the
underlying descriptions refer to multiple items. It appears that the described items are simply
being lumped together and charged in a convenient amount.

1 Copies sent via BNC to:
2 DEAN TYLER BUSH
3 4621 MANCILLA ST.
4 LAS VEGAS, NV 89130

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