

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE:

JAMES HENRY BECKEMEYER,

Debtor.

Case No. 96-3 1124

Chapter 7

WILBERT LIFE INSURANCE COMPANY &
GRACE CEMETERY ASSOCIATION
PERPETUAL CARE CORP.,

Plaintiffs,

Adversary No. 96-1349

V.

JAMES HENRY BECKEMEYER,

Defendant.

ORDER GRANTING PLAINTIFFS' MOTION TO LIFT AUTOMATIC STAY

This core proceeding¹ was heard upon the joint motion **of the plaintiffs, Wilbert** Life Insurance Company and Grace Cemetery Association Perpetual Care Corporation, to **lift** the automatic stay to permit the plaintiffs to confirm their arbitration award against the debtor, James Henry Breckemeyer, in an appropriate court in Louisiana. Based on the statements and arguments of counsel, and the entire record in this cause, the Court finds that the plaintiffs' motion is well taken and should be granted. The following constitutes the Court's findings of facts and conclusions of law pursuant to FED. R. BANKR. P. 7052.

¹ 28 U.S.C. § 157(b)(2)(G).

FACTUAL SUMMARY

The facts surrounding this matter are undisputed. The plaintiffs filed a securities **fraud** action against the debtor in state court in Louisiana, and then removed the action to the United States District Court for the Middle District of Louisiana. After discovery was underway in the district court action, all parties agreed to submit the case to binding arbitration by the National Association of Securities Dealers, Inc. (“NASD”). The securities fraud claims were pending before the NASD at the time the debtor’s bankruptcy case was commenced on August 30, 1996.

The plaintiffs filed a motion to lift the automatic stay on December 9, 1996, in order to proceed with the arbitration. This Court granted the **plaintiffs’** motion, and that decision was appealed to district court. The debtor failed, however, to request a stay **of the** arbitration proceedings pending the appeal, and the arbitration proceeded as scheduled on September 3, 1997.

The NASD rendered its **final** decision in favor of the **plaintiffs** on September 26, 1997, and the plaintiffs now seek permission **from** this Court to proceed with court confirmation of their arbitration award in Louisiana state court. The debtor opposes the **lifting** of the automatic stay, alleging detriment to the debtor if the plaintiffs are allowed to proceed with confirmation at this time.

ANALYSIS AND ORDER

The plaintiffs’ primary reason for requesting relief **from** the automatic stay is so that the plaintiffs may have their arbitration award confirmed by the appropriate court in Louisiana prior to the expiration of the applicable limitations period. LA. REV. STAT. **9:4209** (West 1997) states:

§ 4209. Motion to **confirm** award; jurisdiction; notice. At any time within one year **after** the award is made any party to the arbitration may apply to the court in and for the parish within which the award

was made for an order confirming the award and thereupon the court shall grant such an order unless the award is vacated, modified, or corrected as prescribed in R.S. 9:4210 and 9:4211. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof

The debtor did not seek modification of the arbitration award, and the award is now final pursuant to **LA. REV. STAT. 9:4213**. Section 4213 states:

§ 4213. Notice of motions; when made; service; stay of proceedings. Notice of a motion to vacate, **modify**, or correct an award shall be served upon the adverse party or his attorney within three months after the award is filed or delivered, as prescribed by law for service of a motion in an action. For the purposes of the motion any judge, who might issue an order to stay the proceedings in an action brought in the same court may issue and order, to be served with the notice of the motion, staying the proceedings **of the** adverse party to enforce the award.

The debtor acknowledges that he no longer has the opportunity under Louisiana law to seek **modification of the** arbitration award. In fact, the debtor argues that, due to the finality **of the** award, the plaintiffs will achieve no substantial benefit by seeking court confirmation of the award at this time, and that there is no reason that the plaintiffs should not be made to wait to seek confirmation until such time as this Court has determined the dischargeability of the **award**.² Further, the debtor urges that he will suffer detriment if forced to retain Louisiana counsel to defend the confirmation proceedings.

The debtor's arguments are unpersuasive. It is inconceivable that the debtor will expend great amounts of funds and resources to "defend" confirmation of an award that he acknowledges to be final. The Court therefore finds that the debtor has failed to demonstrate the occurrence of any

² Also pending before the Court is the plaintiffs' complaint and related motion for summary judgment to determine the dischargeability of the debt allegedly owed to the **plaintiffs**, which has now been reduced to the arbitration award.

significant detriment **if the** plaintiffs are allowed to pursue confirmation of their arbitration award at this time.

Furthermore, the plaintiffs' award is useless **if the plaintiffs** are not permitted to seek proper and timely confirmation of the award. Although, as the debtor's counsel pointed out, there is some time remaining before the prescriptive period expires, the Court finds no persuasive reason to force the plaintiffs to wait for court **confirmation**, and perhaps to suffer the pressures of a last-minute filing in Louisiana.

Based on the foregoing analysis, the Court orders that the plaintiffs' motion to lift the automatic stay in order to timely pursue court **confirmation** of the arbitration award is granted.

SO ORDERED this the 19th day of May, 1998.

G. HARVEY BOSWELL
UNITED STATES BANKRUPTCY JUDGE

Ms. Judy Y. Barrasso
Mr. H. Minor Pipes, III.
Attorneys for Plaintiffs
546 Carondelet Street
New Orleans, Louisiana 70130-3588

Ms. Bettye S. **Bedwell**
Attorney for Debtor
100 North Main Building, Suite 1935
Memphis, Tennessee 3 8 103

Ms. Ellen Vergos
United States Trustee
200 Jefferson Avenue, Suite 400
Memphis, Tennessee 3 8 103