

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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**IN RE**

**Stenna Riffle,**

**Case No. 96-13535**

**Debtor.**

**Chapter 13**

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**MEMORANDUM OPINION AND ORDER RE  
(1) MOTION TO SET ASIDE DISCHARGE and (2) MOTION TO LIFT AUTOMATIC  
STAY FILED BY B & H INVESTMENTS**

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The Court conducted a hearing on B & H Investments' "Motion to Set Aside Discharge" and "Motion to Lift Stay" on January 10, 2002. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

**I. FINDINGS OF FACT**

The debtor in this matter, Stenna Riffle, ("Riffle"), filed his chapter 13 petition on October 26, 1996. The movant in this matter, B & H Investments, ("B & H"), was listed on the debtor's matrix attached to the petition with the address of 201 N. Royal St., Jackson, Tennessee 38301. Riffle's chapter 13 plan was confirmed on January 9, 1997. B & H was included in this plan with a secured claim of \$22,000.

On March 20, 1998, the debtor filed an objection to B & H's claim. The debtor alleged that B & H never amended its claim to reflect a \$5,000.00 payment the debtor made prior to

filing the instant chapter 13 case. Riffle's attorney filed a certificate of service for this objection on March 26, 1998, which listed B & H as one of the entities that was served. The Court entered an order sustaining the debtor's objection and amending B & H's claim to \$17,086.84 on May 1, 1998. The order further provided that B & H was to file an amended proof of claim. Riffle's attorney filed a certificate of service for this order on May 7, 1998. Again, B & H was listed as one of the parties served.

As of July 2000, B & H had not filed an amended proof of claim. As a result, Riffle filed a motion requesting an accounting from B & H on July 11, 2000. The Court entered an "Order to Receive Accounting from the Creditor B & H Investments" on October 5, 2000, which stated:

There was no objection to the objection to the claim therefore the order dated May 1, 1998, stands and the remaining balance owed to B & H Investments will be paid by the chapter 13 trustee over the remaining life of the plan.

The debt owing to B & H Investment will be discharged along with all other debts through the debtor's chapter 13 plan.

Riffle's attorney filed a certificate of service for this order on October 16, 2000, listing B & H as one of the parties served.

B & H filed a notice to proceed against the debtor's co-signer on November 27, 2000. Riffle filed an objection to this notice on November 30, 2000, alleging that the debt had been paid in full through the chapter 13 plan. B & H filed a consent order withdrawing its notice on January 17, 2001.

On January 18, 2001, the chapter 13 trustee filed his final accounting and report and motion to close case. The report showed that B & H had been paid a total of \$17,086.84 in

principal and \$4,866.33 in interest through the debtor's chapter 13 plan. The Court entered Riffle's chapter 13 discharge order on January 18, 2001.

Riffle filed a motion to reopen his chapter 13 case on May 7, 2001. Riffle alleged that despite receiving his chapter 13 discharge, B & H refused to release its lien on his property. The Court granted the debtor's motion on August 30, 2001, and reopened the case.

On October 1, 2001, B & H filed a motion seeking relief from the automatic stay in order to proceed against the debtor's cosigner. B & H alleged that the \$5,000 reduction in its claim on May 1, 1998, was a mistake in that it had already given the debtor credit for that \$5,000 pre-petition payment when it filed its claim of \$22,000. B & H further alleged that it had not received notice of the debtor's objection to its claim in 1998 and, therefore, did not object to that objection. Relying on the same alleged grounds, B & H filed a motion to set aside the debtor's discharge on December 11, 2001. The matrix attached to the certificate of service on this motion lists B & H's address as 201 N. Royal St., Jackson, Tennessee.

## **II. CONCLUSIONS OF LAW**

Section 1328(a) of the Bankruptcy Code requires a court to grant a debtor a discharge after the completion of all payments under the plan. Subsection (e) of § 1328 states that;

On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if –

- (1) such discharge was obtained by the debtor through fraud; and
- (2) the requesting party did not know of such fraud until after such discharge was granted.

11 U.S.C. § 1328(e). Bankruptcy Rule 7001(4) requires a request for a revocation of a discharge to be filed as an adversary proceeding.

Despite the provisions of § 1328(e), some courts have determined that discharge orders may be vacated pursuant to FED. R. CIV. P. 60(b), made applicable to bankruptcy matters by FED. R. BANKR. P. 9024, due to clerical errors or mistakes. *In re Cisneros*, 994 F.2d 1462 (9<sup>th</sup> Cir. 1993); *In re Midkiff*, 271 B.R. 383 (B.A.P. 10<sup>th</sup> Cir. 2002); *In re Stovall*, 256 B.R. 490, (Bankr. N.D. Ill. 1999). Some courts hold that Rule 60(b) was intended to reach a "mistake" or "inadvertence" as when the court has not been informed of all the facts. *Cisneros*, 994 F.2d at 1466; *Midkiff*, 271 B.R. at 386. Other courts have limited the *Cisneros* holding to the proposition that a court has the inherent power to correct its own mistakes. *In re Ford*, 159 B.R. 590, 593 (Bankr. D. Or. 1993); *In re Daniels*, 163 B.R. 893, 897 (Bankr. S.D. Ga. 1994), *In re Trembath*, 205 BR. 909, 914 (Bankr. N.D. Ill. 1997).

In the case at bar, B & H has not alleged any fraud on the debtor's part so § 1328(e)'s provision for revoking a discharge is inapplicable to this case. Instead, B & H has alleged that it did not receive notice of the debtor's objection to its claim or the order reducing its claim to \$17,086.84. In order to be successful on these allegations, B & H must prove that the Court made a mistake in issuing Riffle's discharge on January 18, 2001.

B & H alleged that they did not receive notice of the debtor's objection to its claim or the subsequent order sustaining that objection. For several reasons, the Court finds that this allegation does not constitute a "mistake" worthy of setting aside the Debtor's discharge. First,

and foremost, B & H has not alleged that it did not receive notice of the debtor's July 11, 2000, motion for an accounting or the Court's October 5, 2000, order to receive an accounting.

Language in either of those documents was sufficient to alert B & H of the reduction in their claim. Second, B & H's address was listed on the matrix attached to the debtor's 1996 petition as 201 N. Royal St., Jackson, Tennessee. The matrix attached to B & H's certificate of service on its 2001 motion to lift the stay listed the same address. As a result, no mistake as to address could be alleged. Third, Riffle's attorney was diligent throughout the entire pendency of the case to file certificates of service whenever a motion or order was filed. The possibility that B & H received every other document except the motion and the order reducing its claim is slim.

Fourth, there was testimony at the hearing on these matters that B & H participated in a meeting at the Chapter 13 Trustee's office regarding the accounting the Court ordered on October 5, 2000. A representative from B & H was at this meeting, along with counsel for B & H, and had all of their documents regarding the loan and the payments thereon with them. Fifth, B & H waited eleven months after the discharge to file their motion to set the discharge aside. At the very latest, B & H knew that the debtor had received a discharge in February 2001. B & H also knew at that time that they had only received \$17,086.84 in principal from the debtor under his chapter 13 plan. If the reduction in their claim was truly a mistake, then B & H would have known of and been concerned about it much earlier than December 2001.

As a result of these findings, the Court concludes that no mistake was made in granting Riffle's discharge in January 2001. Debtor's counsel filed all the appropriate motions and notices

regarding the reduction of B & H's claim. The Court finds that B & H did have notice of the reduction of their claim regardless of whether or not they received the actual "motion to reduce" and "order reducing." Just by looking at Riffle's file, it is clear that B & H was an active participant in the case. If B & H truly disagreed with the reduction of their claim, perhaps they should have appealed or taken issue with the May 1, 1998, order prior to the debtor's discharge.

### **III. ORDER**

It is therefore **ORDERED** that B & H Investment's (1) Motion to Set Aside Discharge and (2) Motion to Lift Stay are On November 27, 2000, **DENIED**.

It is **FURTHER ORDERED** that the debtor's request for attorneys fees and expenses is **GRANTED**. If the parties are unable to reach a decision on the amount of these fees and expenses, debtor's counsel shall contact the court to set a hearing on the matter.

**It is so ordered.**

**By the Court,**

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**G. Harvey Boswell**  
**United States Bankruptcy Judge**

**Date: February 15, 2002**

cc:

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"Memorandum Opinion and Order re (1) Motion to Set Aside Discharge and (2) Motion to Lift Automatic Stay  
filed by B & H Investments"

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