

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
DAVID LYNN VICKERS,
Debtor.

Case No. 95-31901-L
Chapter 13

MEMORANDUM AND ORDER

Before the Court is a request by David Lynn Vickers, Debtor, for payment of attorney fees in the amount of \$1,000, which resulted from the failure on the part of Mr. Vickers' employer to properly remit deducted wages to the Chapter 13 Trustee. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

On August 11, 1999, Mr. Vickers filed a "Motion to Show Cause as to Why Employer Should Not be Held in Contempt of the Court's Order." Global Tissue (previously Shepherd Tissue) failed to respond. A hearing was conducted on September 8, 1999, which resulted in an order requiring Global Tissue to appear and show cause as to why it should not be held in contempt. At the show cause hearing on October 12th, Global Tissue failed to appear, but evidence introduced by Mr. Vickers proved that as of the hearing date Global Tissue had deducted \$14,668 from his wages but had only forwarded \$10,036 to the Chapter 13 Trustee. The court found that the actions of Global Tissue were a willful violation of a previous order of the court and rendered a judgment against Global Tissue for \$ 4,632, the difference between that amount deducted and amount actually submitted.

Left unresolved at the hearing was the issue of whether Mr. Vickers was entitled to an award of attorney fees. Counsel for Mr. Vickers presented proof regarding the \$1,000 he was seeking, which included \$625 for appearances in court, \$125 to draft the pleadings, and \$250 to review the record and correspondence.

A court possesses an inherent power to punish for contempt with the assessment of attorney fees being within that power. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 44-45, 111 S.Ct. 2123, 2132-33, 115 L.Ed.2d 27 (1991). Although the “American Rule” prohibits fee shifting, the Supreme Court has found three exceptions to that rule. *Id.* at 45. Courts are permitted to shift fees based upon either a “common fund exception”, a finding that a party acted in bad faith or for oppressive reasons, or when a party willfully disobeys a court order. *Id.*

At the October 12, 1999, hearing the court found that Global Tissue had willfully violated a previous order of the court. Therefore, based upon the court’s inherent powers and the Supreme Court finding in *Chambers*, the court finds that Global Tissue must pay the attorney fees of David Lynn Vickers in the amount of \$1,000.

ORDER

From all of the foregoing, it is accordingly, **ORDERED**, that a judgment in the amount of \$5,632, including \$1,000 attorney fees, be entered in favor of David Lynn Vickers against Global Tissue as sanctions for the unremitted payroll deductions.

BY THE COURT:

JENNIE D. LATTA
United States Bankruptcy Judge

Date: _____

cc: Debtor’s Attorney
Debtor
Global Tissue
Chapter 13 Trustee