

**Dated: September 30, 2022**  
**The following is ORDERED:**



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**M. Ruthie Hagan**  
**UNITED STATES BANKRUPTCY JUDGE**

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

In re  
**Shanieka R. Williams**  
Debtor

Case No. 22-21889  
Chapter 13

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**MEMORANDUM, ORDER AND JUDGMENT REGARDING MOTION FOR SANCTIONS**  
**AGAINST CREDITOR BESTWAY RENTAL, INC. FOR VIOLATION OF THE**  
**AUTOMATIC STAY UNDER 11 U.S.C. § 362 AND NOTICE OF THE ENTRY THEREOF**

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**Introduction**

Before the Court are the issues of 1) whether a willful and injurious violation of the automatic stay has occurred under 11 U.S.C. §362(k) in the instant case and 2) if so, what actual and/or punitive damages and sanctions, if any, should be imposed.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (G) and (O). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 9014 and 7052. This court notes it has given notice and opportunity for hearing to Bestway Rental, Inc. (“Respondent” or “Bestway”). Bestway failed to appear in this proceeding and respond as to whether it committed a “willful violation” of the automatic stay under 11 U.S.C. § 362(k). Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, considered the testimony given in this matter, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby grants the Debtor’s motion for sanctions against Bestway for a willful violation of the automatic stay pursuant to 11 U.S.C. § 362(k).

### **History**

The procedural history of this Chapter 13 case is relatively short. On May 12, 2022, the Debtor filed the instant case as a voluntary case under Chapter 13 of Title 11 of the United States Code (the “Bankruptcy Code”). The day after the Debtor filed bankruptcy, the Debtor informed Bestway of her pending Chapter 13 case, and it responded that “that doesn’t matter” and refused to stop debiting funds from the Debtor’s bank account. [Motion for Sanctions DE 17]. Counsel for the Debtor also sent email correspondence on May 13, 2022, advising Bestway of the bankruptcy case and advising of the automatic stay. [*Id.* Exh. 1].

After receiving notice of the bankruptcy case, Bestway proceeded to call the Debtor at least

four times to demand payment. Bestway even threatened to come to the Debtor's home to take possession of certain household property. Bestway proceeded to collect two payments from the Debtor on May 21, 2022 in the amount of \$36.04 and on June 4, 2022 in the amount of \$30.71.<sup>1</sup>

The Debtor filed an Expedited Motion for Sanctions for Violation of Automatic Stay against Bestway on June 21, 2022. [DE 17] The Bankruptcy Court Clerk issued a "Notice of Hearing," setting the Debtor's motion for hearing on July 20, 2022. [DE18] This notice was emailed to Bestway at [JGEORGE@BESTWAYRTO.COM](mailto:JGEORGE@BESTWAYRTO.COM). Debtor's counsel also stated that notice was sent via U.S. Mail to Bestway's address in Richardson, Texas.

At the hearing the Debtor, Shanieka Williams, provided sworn testimony of the above facts. The Court took this matter under submission for further consideration and now addresses the issues before the Court in this memorandum opinion and order.

### **Findings of Fact and Conclusions of Law**

The filing of a Chapter 13 petition under the Bankruptcy Code causes the automatic stay to come into existence by operation of law by virtue of 11 U.S.C. § 362(a). Specifically, this automatic stay operates to stay "any act to obtain possession of property of the estate . . . or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Property of the estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1).

Here, according to the Debtor's testimony at the July 20, 2022 hearing, the Debtor purchased, among other things, bed rails and a freezer from Bestway. She entered into a rental purchase agreement which provided a purchase option at the end of the rental payment term. The household goods were in the Debtor's possession at the time the Chapter 13 petition was

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<sup>1</sup> The Debtor cancelled her bank card after June 4, 2022 to ensure no further collection efforts were made by Bestway.

filed along with the Debtor's cash on hand; therefore, the filing of the Chapter 13 case caused the household goods and cash on hand to become property of the estate under 11 U.S.C. § 541(a). Furthermore, the automatic stay was in operation upon the filing of the Chapter 13 petition and operated as a stay against any act to obtain possession (i.e., repossession) of the household goods or obtain possession of property from the estate or to exercise control over property of the estate (i.e., cash on hand).

Having established that the household goods and cash on hand are property of the estate, the Court now finds that Bestway violated the automatic stay at least three times: First, when it contacted the Debtor four times attempting to collect payment and/or to repossess the household property. Second, when it twice debited the Debtor's bank account in May 2022 and again in June 2022. Third, by exercising control over the Debtor's cash on hand even after having actual knowledge about the above-styled bankruptcy case.

Furthermore, the Debtor testified that Bestway debited her bank account in May 2022 and in June 2022, and deprived both the estate of possession of its property and also deprived the Debtor of the use of said property (and also caused the Debtor to incur overdraft fees). These actions directly violated the automatic stay and Bestway's continued possession of property of the estate also violates the automatic stay under § 362(a)(3). The nature of these violations under a totality of the particular facts and circumstances are egregious, especially in light of the multiple notices given to Bestway and its continued threat to come to the Debtor's home to repossess the household goods, along with its continued withdrawals (and continued holding) of funds from the Debtor's bank account. Even a creditor who innocently violates the automatic stay has an affirmative duty to restore the status quo without the debtor having to invoke the aid of the bankruptcy court. The creditor's failure to do so constitutes a willful violation of the stay.

*In re Dungey*, 99 B.R. 814, 816 (Bankr. S.D. Ohio 1989)(citations omitted).

Since at least three violations of the automatic stay have occurred, the question now turns to the remedy. Section 362(k)(1) provides that where an individual is injured by a willful violation of the stay, the individual “shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” 11 U.S.C. §362(k)(1). Actions taken in violation of the automatic stay imposed under § 362(a) are invalid and voidable and shall be voided absent limited equitable circumstances. *Easley v. Pettibone Michigan Corp.*, 990 F.2d 905, 911 (6th Cir. 1993); *see also Smith v. First Am. Bank, N.A. (In re Smith)*, 876 F.2d 524 (6th Cir. 1989).

The refusal of a creditor to return property upon learning of the bankruptcy filing is itself a “willful violation” of the automatic stay provisions and may be contemptible. That is, the innocent creditor has an affirmative duty to return the property and restore the status quo once it learns its actions violated the stay. *See Miller v. Savings Bank of Baltimore (In re Miller)*, 10 B.R. 778, 780 (Bankr. D. Md. 1981), *aff’d* 22 B.R. 479 (D. Md. 1982); *Matter of Clark*, 60 B.R. 13, 14 (Bankr. N.D. Ohio 1986)(citation omitted). Actually, the creditor should undo its post-petition collection activities without the debtor having to seek affirmative relief from the bankruptcy court. *In re Dungey*, 99 B.R. at 816. To place the onus on the debtor to take affirmative legal steps to recover property in violation of the stay would subject the debtor to the financial pressures the automatic stay was designed to temporarily abate, and render the breathing spell from creditors illusory. *In re Miller*, 10 B.R. at 481.

The bankruptcy court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105; *see also Mountain Am. Credit Union v. Skinner (In re Skinner)*, 917 F.2d 444, 447 (10<sup>th</sup> Cir. 1990); *Burd*

*v. Walters (In re Walters)*, 868 F.2d 665, 670 (4<sup>th</sup> Cir. 1989). Bankruptcy court enforcement against § 362(k) violations is akin to civil contempt motions. *Id.* An injured debtor is entitled to recover actual damages resulting from the stay violation. 11 U.S.C. § 362(k). “If the bankruptcy court believes that the amount of such actual damages is insufficient to deter . . . deliberate and repeated violations of the automatic stay . . . , the bankruptcy court is free to impose an appropriate amount of punitive damages.” *Archer v. Macomb County Bank*, 853 F.2d 497, 500 (6<sup>th</sup> Cir. 1988).

In this case, the Respondent’s actions appear to be a clear, willful violation of the automatic stay because the Respondent has been on notice of the bankruptcy filing thru multiple communications from both the Debtor and her counsel. Debtor listed the Respondent in her Chapter 13 schedules and on the creditor matrix. Notice of the filing of the case and every subsequent notice were sent to the Respondent. All three violations of the automatic stay occurred while the Respondent was on notice; therefore, the failure to remedy the violation and the failure to appear and offer under § 362(k)(2) a good-faith defense to the violation demonstrates the continued willful violation of the automatic stay.

The Debtor has been without benefit of the funds taken post-petition in addition to having to pay overdraft fees, and has been forced into this litigation due to the Respondent’s willful conduct and disrespect of the bankruptcy process. Both actual damages and punitive damages, in addition to an award of Debtor’s attorney fees, are appropriate under the circumstances of this Chapter 13 case.

The Court hereby awards a judgment for actual damages of \$1,767.75 against the Respondent in favor of the Debtor. These actual damages consist of \$66.75 for the deprivation of the funds taken and \$56.00 for overdraft fees incurred, plus Debtor’s attorney fees in the

amount of \$1,645.00 [DE 36].

In order to deter Respondent from acting in this willfully injurious manner in the future and to uphold the integrity of the bankruptcy process, the Court also awards punitive damages and sanctions under § 362(k)(1) by equitably voiding any interest the Respondent has regarding the household goods, property of the estate or property of the Debtor.<sup>2 3</sup> *See Hubbard v. Fleet Morg. Co.*, 810 F.2d 778, 782 (8<sup>th</sup> Cir. 1987) (finding no abuse of discretion where a bankruptcy court released a deed of trust lien as a punitive sanction for a willful violation of the automatic stay); *see also Credit Nation Lending Servs., LLC, v. Nettles*, 489 B.R. 239, 251 (N.D. Ala. 2013) (affirming the bankruptcy court's determination that a debt and lien should be discharged as a sanction for willfully violating the automatic stay).

The Debtor is authorized to execute any documents or the recording of this Order as necessary under Tennessee and/or any other state law in order to reflect this Court's extinguishment of the Respondent's interest in the affected property.

Based on the foregoing and the entire case record as a whole, IT IS ORDERED AND NOTICE IS HEREBY GIVEN that:

1. The Respondent, Bestway Rental, has willfully and injuriously violated the automatic stay as contemplated under § 362(k) in three instances: First, when it contacted the Debtor four times attempting to collect payment and/or to repossess

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<sup>2</sup> By equitably voiding the Respondent's interest in the household property, any remaining debts against the Debtor will be unsecured and subject to the Chapter 13 discharge if the plan is completed. The equitable voiding of Respondent's interest here is not to be confused with the strip-down or strip-off procedures that routinely occur under §§ 506(a), 506(d), 522(f), or § 1322(b)(2). In addition, any lien, having been equitably voided here, is not to spring back if the Debtor's Chapter 13 case is dismissed. *See* 11 U.S.C. § 1325(a)(5)(B)(II). The equitable voiding of any of the Respondent's liens is a final judgment and is not subject to any contingencies.

<sup>3</sup> The Court further finds that Bestway's rental purchase agreement is a security agreement disguised as a rental agreement.

the household property. Second, when it twice debited the Debtor's bank account in May 2022 and June 2022. Third, by exercising control over the Debtor's cash on hand;

2. Actual damages in the amount of \$1,767.75 are awarded as a judgment against the Respondent and in favor of the Debtor, with post-judgment interest as provided in 28 U.S.C. § 1961 until paid in full. *See* [www.federalreserve.gov/releases/h15/](http://www.federalreserve.gov/releases/h15/)(visited September 30, 2022); and
3. The Respondent's willful violations of the automatic stay justify additional punitive damages and sanctions that include equitably voiding the Respondent's interest in the household goods described herein and in the rental purchase agreement.

The Bankruptcy Court Clerk is directed to cause a copy of this Memorandum, Order, Judgment and Notice to be sent to the following entities:

Bestway Rental, Inc.  
Attn: Bankruptcy Dept  
2703 Telecom Pkwy, Ste 190  
Richardson, TX 75082-3558  
[jgeorge@bestwayrto.com](mailto:jgeorge@bestwayrto.com)

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