

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL,)
)
RELATOR,) Case No. 2010-2021
)
v.) Board Case No. 09-023
)
PERCY SQUIRE,)
)
RESPONDENT.)

**NOTICE OF THE OHIO ATTORNEY GENERAL’S POSITION ON RESPONDENT’S
MOTION TO SUPPLEMENT THE RECORD**

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MEMORANDUM

In the “Response of Respondent Percy Squire to Motion to Supplement the Record”¹ filed with the Court on December 14, 2015, Percy Squire argues the Attorney General’s collection costs are void *ab initio* because they were added to the account after his Chapter 11 bankruptcy case was filed and, therefore, according to his position, the Attorney General collection costs were allegedly assessed in violation of the automatic stay. As more fully explained below, Mr. Squire’s interpretation of the automatic stay is misguided.

The bankruptcy case at issue (Ch. 11 Case No. 12-53950, the “Bankruptcy Case”) was filed on May 7, 2012 (though Mr. Squire incorrectly references the petition date as May 7, 2015 in his response). Six months later, on November 5, 2012, the board and publication costs associated with this case were certified to the Attorney General’s Office for collection (the “Disciplinary Debt”). The Bankruptcy Case was dismissed on December 13, 2012 - just one month after the certification of the Disciplinary Debt.

Based on a plain reading of 11 U.S.C. § 362(a) (the automatic stay provision of the Bankruptcy Code), the addition of collection costs and interest after the automatic stay is in place is not prohibited. First, there is no provision under 11 U.S.C. § 362(a) that explicitly prohibits the Ohio Attorney General from imposing statutory costs pursuant R.C. § 131.02. Rather, the provisions of 11 U.S.C. § 362(a), though relatively broad, merely prevent the continuation of collection efforts against the debtor and the bankruptcy estate. Pursuant to R.C. § 131.02 and S.Ct.Prac.R. 13.05(D), this Court certified the outstanding Disciplinary Debt to the Attorney General for collection. At that point, the Attorney General merely included collection costs in its

¹ Respondent’s Motion to Supplement Record was entered on the Court’s Docket as *Response To Motion to Supplement The Record With Corrected Statement of Costs and Motion to Eliminate Costs Certified to Attorney General’s Office For Collection*.

calculation of the outstanding balance due, it did not take affirmative steps to collect or enforce the Disciplinary Debt outside of the bankruptcy proceeding, which is exactly what 11 U.S.C. § 362 is designed to prevent. This is the key distinction in this matter. Tellingly, Mr. Squire fails to point to a specific subsection of § 362(a) that he claims has been violated by imposing collection costs.

Secondly, regardless of whether the addition of statutory collection costs is a violation of the automatic stay (which it is not), the automatic stay has no bearing on Mr. Squire's current obligation because his Chapter 11 case was dismissed. The general effect of a dismissal order is to restore the parties to their respective legal situations just prior to bankruptcy. 2A Banker. Service L. Ed. § 17:164. The effect of a case being dismissed is governed by 11 U.S.C. § 349. *In re Wcislak*, 446 B.R. 827, 829 (Bankr. N.D. Ohio 2011). The prepetition rights of creditors against the debtor are also restored. *Id.* 11 U.S.C. § 349 seeks "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." *Id. citing In re Plata*, 958 F.2d 918, 923 (9th Cir.1992), *citing* S.Rep. No. 989, 95th Cong., 2nd Sess. 49 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5835; *In re Webb Mtn, LLC*, 420 B.R. 418, 429 (Bankr.E.D.Tenn.2009). *See also, Shell Oil Co. v. Capital Fin. Servs.*, 170 B.R. 903, 906 (SD Tex. 1994) (IRS lien filed during case allowed to stand and attach to funds in view of dismissal) and *In re Pickett*, 325B.R. 579, 581 (E.D. Mich. 2005) ("Rather than void the lien, the dismissal voids the stay, and voids it from its inception," and "the effect of the stay (and anything arguably done in violation thereof) in that case was lost upon dismissal of that case.").

Finally, "[i]t is a basic facet of bankruptcy law that the automatic stay found in 11 U.S.C. § 362 was intended to be used only as a shield, protecting debtors and their estates; it was not

intended to operate as a sword to be used by debtors for their monetary gain.” *In re Wcislak*, 446 B.R. at 830. *See also, e.g., In re Robinson*, 483 B.R. 147, 162 (Bankr. W.D. Tenn. 2012) vacated and remanded sub nom. *United States v. Robinson*, 494 B.R. 715 (W.D. Tenn. 2013) aff’d sub nom. *In re Robinson*, 764 F.3d 554 (6th Cir. 2014); and *In re Rivera*, 345 B.R. 229, 237 (Bankr.E.D.Cal.2005).

In sum, the mere assessment of statutorily authorized collection costs does not violate the provisions of 11 U.S.C. § 362. Notably, Mr. Squire fails to point to any specific provision of 11 U.S.C. § 362 that has been violated. Moreover, it is well established that the parties go back to status quo upon dismissal of a bankruptcy case. Here, Mr. Squire is attempting to use the automatic stay, which is inapplicable at this point in time, as a sword to avoid his obligation to pay the outstanding collection costs. The Court should find his argument unpersuasive and require him to pay outstanding collection costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2015 a true and correct copy of the foregoing *Notice of Attorney General's Position on Respondent's Motion to Supplement the Record* was served upon the following parties by regular, prepaid U.S. mail and electronic mail at the following addresses:

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