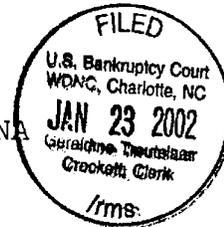


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION



In re: ) Chapter 13  
Emily Carol Beckham, ) Case No. 01-31745  
Debtor. )  
\_\_\_\_\_ )

JUDGEMENT ENTERED ON JAN 23 2002

**ORDER IMPOSING SANCTIONS**

This matter is before the court on a Motion for Sanctions pursuant to Bankruptcy Rule 9011 filed by the debtor's attorney against a second attorney engaged by the debtor to assist in reopening her Chapter 13 case. A hearing was held on January 16, 2002. For the reasons stated below, the court has concluded that sanctions are appropriate based on the court's inherent power to control the conduct of cases before it.

**Jurisdiction**

1. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter came before the court after proper notice, and all parties are properly before the court.

**Factual Background**

3. Represented by the movant, the debtor filed a voluntary petition for Chapter 13 bankruptcy protection and a Chapter 13 plan on June 26, 2001.
4. In addition to filing these documents on behalf of the debtor, the movant advised the debtor that she was required to

make a first money payment within thirty days of filing her plan.

5. On August 7, 2001, the first meeting of creditors in debtor's Chapter 13 case was held. The debtor advised the Chapter 13 Trustee that she had delivered a money order for her payment of first money to the movant's office.

6. In a letter dated August 10, 2001, the debtor was notified by the movant that his office had no record of having received the debtor's first money payment.

7. In correspondence dated August 15, 2001, the Chapter 13 Trustee notified the debtor that her case was subject to dismissal due to a failure to make a first money payment within thirty days of filing the debtor's Chapter 13 plan pursuant to 11 U.S.C. § 1326(a).

8. On August 28, 2001, an order dismissing the debtor's Chapter 13 case was entered.

9. On or about October 21, 2001, the debtor's car was repossessed.

10. On October 31, 2001, the debtor, now represented by the respondent, filed a motion to reopen her case in which she swore under oath that:

(a) she had escrowed a \$270.00 first money payment with the movant; and

(b) these funds were to be presented at her first meeting of creditors; and

(b) she, upon notification from the movant that he had been unable to find the funds, had advanced another \$270.00 to him; and

(c) the movant had failed to forward these monies to the Chapter 13 Trustee.

11. On October 31, 2001, an ex parte order was entered granting the debtor's motion to reopen her case which set forth the debtor's allegations as findings of fact.

12. In obtaining this order from the court, the respondent represented that the matter had been discussed with the movant and implied agreement with the order presented.

13. In fact, while there had been some discussion between the parties, there was anything but agreement. The movant had notified the respondent that he did not believe the debtor had been truthful in her conversations with the respondent, and that he denied the allegations regarding the movant's conduct that the debtor had made to the respondent. Respondent had faxed papers to the movant's office the morning before approaching the court ex parte, but never specifically sought or obtained the movant's agreement to the ex parte approach to the court. Respondent saw and spoke with the movant later the same day but again did not confirm his receipt of the faxed papers or agreement with them. In the absence of such specific discussion of either substance or procedure, respondent approached the court ex parte upon the

representation that the mater was not contested. Upon that representation, the offensive order of October 31, 2001, was entered by the court.

14. The court met with both the movant and the respondent on November 13, 2001. After that meeting, the court entered an order striking its October 31, 2001, order and setting a hearing to determine whether the debtor's case should be dismissed or reinstated and ordering the debtor to provide documentation or other substantiation of her allegations. This order was entered on November 14, 2001.

15. On December 3, the offending order having been struck, the movant filed the instant motion for sanctions against the respondent. That motion was heard on January 16, 2002, in conjunction with the debtor's appearance before the court in accordance with the November 14 order.

15. When the debtor appeared before the court on January 16, 2002, she was unable to produce a receipt or other evidence of payment made to the movant's office between the date of her petition, June 26, 2001, and the date her case was dismissed, August 28, 2001.

16. At the January 16 hearing, the court declined to reinstate the debtor's Chapter 13 case.

#### **Discussion**

17. The motion before the court is for the imposition of

sanctions pursuant to Bankruptcy Rule 9011. Rule 9011(c) sanctions require subjective findings that the strictures of Rule 9011(b) have been violated. Rule 9011(b) is violated when representations before the court have been presented for improper purpose; or are not warranted by existing law or a nonfrivolous argument to extend the law; or include factual contentions that lack evidentiary support; or constitute denials of factual contentions that are not warranted by the evidence. FED. R. BANKR. P. 9011(b).

18. The court concludes that it is not necessary, in this case, to deal within the limited scope of Rule 9011. The matter before the court relates more broadly to attorney conduct and interaction with the court. For that reason, the court has determined that sanctions are more appropriately imposed in accordance with the court's inherent power to control the conduct of cases before it.

19. The Supreme Court has held that courts have such an inherent power that "extends to a full range of litigation abuses." Chambers v. NASCO, 501 U.S. 32, 46 (1991). Moreover, the court's inherent powers are not displaced by the authority to impose sanctions outlined the Federal Rules of Civil Procedure or the corresponding Federal Rules of Bankruptcy Procedure. Id. at 42-43. Therefore, a court may invoke its inherent power in conjunction with, or instead of, sanctioning provisions such as

Bankruptcy Rule 9011. In re Weiss, 111 F.3d 1159, 1171 (4<sup>th</sup> Cir. 1997), cert. denied, McGahren v. First Citizens Bank and Trust Co., 522 U.S. 950 (1997). Presenting misrepresentations to a bankruptcy court falls within the realm of behavior that is sanctionable pursuant to the court's inherent powers. Id. at 1172.

20. The potency of the court's inherent powers requires that they "be exercised with restraint and discretion." Chambers, 501 U.S. at 44 (citation omitted). In determining appropriate sanctions, courts must exercise special care. See id. at 45.

21. The "American Rule" holds that each party to a court action must pay its own attorney's fees. ITT Industrial Credit Company v. Durango Crushers, Inc., 832 F.2d 307, 308 (4<sup>th</sup> Cir. 1987). Exceptions to this rule generally fall within the purview of Congress. Id. (citing Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975)). However, a court does have the inherent power to award attorney's fees as a means of policing itself. Chambers, 501 U.S. at 46. An assessment of attorney's fees is regarded as falling well within the court's inherent powers as a "less severe sanction." Id. (citation omitted).

23. Lawyers are cautioned to remember that they are officers of the court. Blair v. Shenandoah Women's Center, Inc.,

757 F.2d 1435, 1438 (4<sup>th</sup> Cir. 1985). An attorney's zealous representation of clients must be governed and regulated by the procedural rules and the inherent powers of the court applicable to all litigation. Id. A lawyer may not "shield his transgressions behind the simplistic plea that he only did what his client desired." Id.

24. In this case, the respondent presented an ex parte order to the court and, in doing so, represented that he had discussed the issues addressed in the order with the movant and obtained the movant's approval. In fact, there was no agreement about any specifics of the order or the manner in which it was presented to the court--and respondent either knew that and ignored it or should have known it.

24. The court does not find the debtor's allegations credible and, based upon the findings in a separate order, the court has dismissed her case. The court also notes that the movant in this case represents hundreds of debtors in this district each year and has represented thousands of debtors before the court in the more than fourteen years the court has been on the bench. In the experience of the court, the debtor's allegations are the only such claims the court has heard regarding the movant's conduct.

25. Moreover, the court depends on the attorneys who practice before it to deal professionally and candidly with one

another as well as with the court. Professionalism and candor from officers of the court demand that orders submitted to the court be reviewed by the attorneys involved, and that the lawyers' respective positions be made clear to the court.

26. Here, the respondent moved to reinstate the debtor's case as a means of obtaining turnover of the debtor's car, but the ex parte order submitted to the court alleged far more than was necessary to achieve that result. Instead, that order incorporated as factual findings the debtor's allegations that the movant had misappropriated not one but two first money payments. The instant motion resulted from respondent's failure to exhibit the level of professionalism and candor that this court requires of the attorneys who appear before it.

27. Mindful of the need to exercise discretion in awarding sanctions, the court sanctions the respondent in the amount \$750 in attorney's fees to be paid to the movant. This award is intended to restore the movant to the position he occupied before the respondent caused the ex parte order to be entered.

### **Conclusion**

For the above stated reasons, the court concludes that sanctions, as an exercise of the court's inherent powers, are appropriate in this case.

It is, therefore, ORDERED that the respondent pay to the movant attorney's fees in the amount of \$750 within thirty days of this order.

*George R. Hodges*  
Dated as of date entered

---

**George R. Hodges**  
**United States Bankruptcy Judge**