

54,000 Reasons Not to Violate the Automatic Stay

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Recently, in [In re Johnson](#), a bankruptcy judge in the United States Bankruptcy Court for the Western District of North Carolina issued a ruling that reminds lenders of the trouble that can befall them if they violate the automatic stay in bankruptcy. In holding a lender liable for punitive damages, the Court invoked a \$100 per violation standard for willful disregard of the automatic stay. Considering that the Court found 540 violations, the ruling was the judicial equivalent of a public flogging of the offending lender. Ultimately, the ruling cautions that lenders need effective systems in place so that all collections activities - human or automated -- cease upon notice of a bankruptcy filing.

The automatic stay provision of the Bankruptcy Code prevents a creditor from attempting to collect a debt while the debtor is under bankruptcy protection unless the creditor gets the prior approval of the bankruptcy court. In [In re Johnson](#), the debtors filed a Chapter 13 bankruptcy petition and listed a secured claim in favor of Nationstar Mortgage, their mortgage company -- and Nationstar received notice of the filing.

The bankruptcy filing triggered a flurry of activity from Nationstar. Unfortunately, all of it violated the automatic stay. Over a six-month period, Nationstar called the debtors three or four times per day, seven days per week. They sent representatives to the debtors' house on three occasions. They sent demand letters to the debtors. They started a foreclosure special proceeding. (Ironically, this all occurred at a time when the debtors were current on their mortgage payments.)

Nationstar had no lack of notice that the debtors were in bankruptcy. In addition to the initial notice, the debtors notified Nationstar's representatives of the bankruptcy. The debtors' attorney sent a warning letter to Nationstar, which was ignored, so the attorney filed a motion for sanctions. Nationstar did not respond to the motion for sanctions or appear in court to explain its actions. Instead, in one of the more brazen (and oblivious) moves a lender might consider in these circumstances, Nationstar filed a motion for relief from the automatic stay. (It withdrew the motion before the hearing on the motion for sanctions.)

Section 362 of the Bankruptcy Code provides for recovery by the debtor of actual damages incurred as a result of a "willful" violation of the automatic stay, including costs, attorneys' fees, and -- in appropriate circumstances -- punitive damages. Unfortunately for creditors, a good-faith mistake is not a valid defense. It is enough to establish the "willfulness" element of a violation if the court finds that the creditor has committed an intentional act with knowledge of the automatic stay.

When Nationstar failed to appear and defend itself in court the bankruptcy judge, not surprisingly, found that Nationstar committed "intentional," "deliberate," and "willful" violations of the automatic stay. The reckoning was financially painful for Nationstar and spectacular; likely to land Nationstar on any top ten list of most embarrassed lenders. The court directed Nationstar to pay the debtors \$100 per improper phone call. Since there were an estimated 540 calls, the award was \$54,000. On top of that, the Court directed Nationstar to pay actual damages for travel expenses and attorney fees incurred by the debtors. Ironically, the total award of \$57,597.23 exceeded Nationstar's secured claim of \$56,317.

For lenders, the lesson is clear. Put a procedure in place so that if a customer files bankruptcy, everyone knows about it and no system issues contacts with the customer. And make sure everyone knows that bankruptcy means "full stop" on collection activities against a customer. Indeed, lenders should consult with counsel before communicating at all with customers under bankruptcy protection.

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