

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

DOCKETED

In re

STEPHEN E. KENNEDY  
LISA J. KENNEDY

Case NO. 92-11675 K

Debtors

Enviro-Safety does not dispute the account of its June 29, 1992 call to the debtor, as reflected in the transcript. Rather, it claims that (1) it had not yet received written notice of the debtor's filing as of that date, and (2) until it receives written notice, it should not be charged with a wilful or flagrant violation of 11 U.S.C. § 362(a).

The official Court records show that notice was sent to Enviro-Safety, Inc. at P.O. Box 301, Ridgefield, N.J. 07657 on May 20, 1992. Notice duly mailed is, as a matter of law, presumed received. Mr. Suttora's representation that his company did not receive the notice is not persuasive.

Assuming that Enviro-Safety had no written notice as of the June 29, 1992 phone call, then Mr. Kennedy gave unequivocal verbal notice in the course of that call<sup>1</sup>. Nonetheless, Enviro-Safety remained undeterred in its collection efforts. Indeed, the firm's representative referred to the debtor as "buddy boy", accused him of "playing enough games", of having "lied" and

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<sup>1</sup> Enviro-Safety is not entitled to decide what kind of notice it thinks is sufficient, before it must honor the injunction of 11 U.S.C. § 362.

commanded the debtor to send a check within seven days. Section 362 was enacted specifically to halt these practices. Mercer v. D.E.F., Inc., 48 B.R. 562, 565 (Bankr. D. Minn. 1985).

By Order of September 8, 1992, I found that Enviro-Safety had willfully violated the stay for purposes of 11 U.S.C. § 362(h). I now find that the debtors are entitled to the \$705 in attorney's fees which they requested. I further find that although they suffered no actual damages, punitive damages are appropriate. The debtors seek \$5000 in punitive damages, however I believe that to be excessive. This Court agrees with the rationale in In re NWFx, Inc., 81 B.R. 500 (Bankr. S.D.Iowa 1987) where the Court refused to award punitive damages where the awarded damages exceeded the amount of the claim. Accordingly, I am awarding the debtor \$2500 in punitive damages in light of the awarded fees measured against his \$129 debt.

The Clerk is directed to enter Judgment against Enviro-Safety in the amount of \$3205.00.

SO ORDERED.

Dated: Buffalo, New York  
October 27, 1992

  
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U.S.B.J.