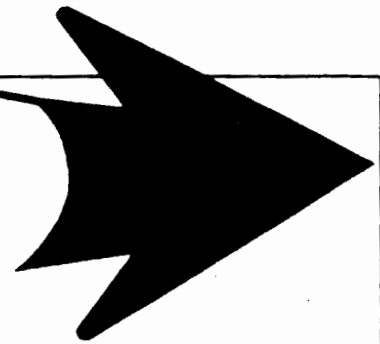


# THE ARROW

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## DEBTOR FAILS TO SHOW WILLFUL VIOLATION OF STAY

Most creditors are aware that the filing of a bankruptcy petition stays any action by a creditor to collect a prepetition debt or enforce a prepetition lien. All the restrictions imposed by the so-called "automatic stay" are set forth in the Bankruptcy Code, 11 U.S.C. §362. The purpose of the stay is to protect debtors from harassment by their creditors and to safeguard the debtor's assets until they can be distributed in an orderly fashion.

In 1984, Congress added the following amendment to the statute creating the automatic stay:

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages.

The Seventh Circuit Court of Appeals has held that the above explicit sanction added by Congress creates a separate cause of action that can be enforced at the district court level even after the bankruptcy proceeding itself has been dismissed or otherwise terminated. *Price v. Rochford*, 947 F.2d 829 (7th Cir. 1991).

The *Price* case, however, should not be a cause for alarm among responsible creditors. In *Price*, a former attorney filed three separate bankruptcy petitions within a one year period, each of which was dismissed by the bankruptcy court. Five months after dismissal of his last petition, Price brought suit in the district court against creditors who proceeded against him in state court while one or another of his bankruptcies was pending. He claimed that these defendants had willfully violated the provisions of the automatic stay and therefore sought damages, including his attorney's fees.

In view of the fact, however, that the creditors in question filed sworn affidavits to the effect that they were not aware of the bankruptcy filings, the Court of Appeals affirmed dismissal of the claim against these creditors by the district court. Price attempted to show that the defendant creditors knew he was in bankruptcy because the fact of his petition had been published in the local newspaper. Price had failed to give the bankruptcy court an acceptable list

of creditors to notify, however, and did not claim he had himself made any systematic effort to notify his creditors. The record also showed that any time Price had raised his pending bankruptcy as a defense in state court proceedings, those proceedings had been continued until the subsequent dismissal of each petition.

Although the newspaper articles were admissible as evidence and presented no hearsay problem (they were not offered as proof of the fact that he had bankrupted, but merely that the papers had reported him to have been in bankruptcy), the Court of Appeals nevertheless went on to say, "Even if we consider the articles, however, Price has still raised no more than a metaphysical doubt. We may wonder whether lawyers in a relatively small city would read articles about the troubles of local businessmen, but Price offered no specific facts tending to show that any of the defendants read these articles or even that they read the newspaper in which the articles appeared."

Not only was the dismissal of the creditors as defendants upheld by the Seventh Circuit, but the Court of Appeals also upheld an imposition of a sanction against Price by the district court under Federal Rule of Civil Procedure 11, because he had misrepresented court records in making allegations against one of the defendants.

Creditors are understandably reluctant to violate the automatic stay, but Price v. Rochford indicates that as long as the violation is an unintentional one, the sanctions provided by 11 U.S.C. §362(h) should not be the subject of irrational creditor fears.

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