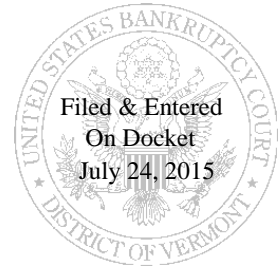


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Scott T. Miller,
Debtor.**

**Chapter 13 Case
14-10301**

ORDER
FINDING CREDITOR IN CONTEMPT OF COURT AND IMPOSING SANCTIONS
FOR VIOLATION OF COURT ORDER

On October 30, 2014, creditor Nationstar Mortgage, LLC (hereafter "Nationstar") filed a notice of post-petition mortgage fees, expenses, and charges (doc. # 20). On October 31, 2014, Scott T. Miller (the "Debtor") filed a motion to disallow those post-petition fees (doc. # 21). On January 23, 2015, the Court conducted a hearing on the Debtor's motion, at which the Debtor appeared by counsel and Nationstar did not. On March 12, 2015, the Court entered an Order (doc. # 27) granting the Debtor's motion to disallow post-petition fees and awarding the Debtor attorney's fees and costs in the amount of \$633.48. On May 11, 2015, the Debtor filed a motion for contempt (doc. # 31). In that motion, the Debtor's counsel asserted that despite her substantial efforts to obtain payment, Nationstar had failed to meaningfully respond to the Debtor's counsel's communications, and had failed to pay the Debtor as ordered in this Court's March 12th Order. The Debtor therefore sought a finding of contempt and an award of sanctions against Nationstar, as well as reasonable attorney's fees and costs in connection with that motion. On May 29, 2015, the Court entered an Order (doc. # 32) granting that request for attorney's fees and directing Nationstar to appear at a hearing to be held on July 10, 2015, and show cause why sanctions should not be imposed on Nationstar for its failure to comply with the Court's Order. That Order set forth the basis for the Court's jurisdiction to impose sanctions, found that Nationstar was aware of, or should have been aware of the Court's Order, that it failed to comply with it, and that it had violated a sufficiently specific and precise order to warrant the imposition of sanctions. Additionally, that Order stated that the sanction the Court was considering was a \$200 per day penalty, and if Nationstar failed to appear at the July 10th hearing, it risked having the daily monetary sanctions tripled.

Nationstar appeared for the first time, and through counsel, at the July 10th hearing, more than seven months after the Debtor's original motion was filed. Counsel represented that Nationstar had paid the Debtor's counsel the \$633.48 ordered on March 12th, as well as the fees the Debtor's counsel anticipated incurring at the July 11th hearing. He also asserted Nationstar did not intentionally and willfully violate the Court's Order, and apologized for the deficiencies in Nationstar's handling of this case, asserting it was internal mishandling of the account that caused Nationstar's failure to give the correspondence from the Debtor and the Court the attention it warranted. He represented that the failure to comply was a mistake for which Nationstar apologized, and assured the Court that no such errors would occur in this case going forward. Based on those representations, counsel for Nationstar asserted the Court could find cause to deny the Debtor's motion for sanctions.

While Nationstar's counsel is to be commended for motivating Nationstar to fully and immediately pay the Debtor's counsel all fees incurred in this matter, and for presenting a zealous argument in support of Nationstar's plea to be spared sanctions, THE COURT FINDS Nationstar's conduct constitutes contempt of court and civil contempt sanctions are warranted.

As this Court ruled earlier this year, it has the authority to impose civil contempt penalties in circumstances such as those presented here:

Bankruptcy courts have the power to impose civil contempt sanctions. Bartel v. Eastern Airlines, 1998 U.S. App. LEXIS 71 (2d Cir. N.Y. Jan. 6, 1998) (citing In re Chateaugay Corp., 920 F.2d 183, 187 (2d Cir. 1990)). "[S]anctions in civil contempt proceedings may be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." Id. (citations and quotations omitted). "[P]enalties designed to compel future compliance with a court order are considered to be coercive and avoidable through compliance, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard." Id. (citations and quotations omitted). On a motion for contempt, the movant must demonstrate (1) a "knowing violation of a sufficient, specific and precise order" and (2) "knowledge of the order." In re Damon, 40 B.R. 367, 374 (Bankr. S.D.N.Y. 1984) (collecting cases); see also In re Patterson, 111 B.R. 395, 397 (Bankr. N.D.N.Y. 1989). "Willfulness is not required and intent is irrelevant because of the remedial and coercive nature of civil contempt." Damon, 40 B.R. at 374.

In re Alan and Kim Bean, No. 11-10985, slip op. at 2 (Bankr. D. Vt. Apr. 22, 2015). The Court has already found the initial Order setting forth the risk of sanctions was clear and precise and that Nationstar had ample notice thereof. Likewise, Nationstar had ample notice of the May 29th Order. Nationstar could have avoided the sanctions it faces today, in whole or in part, through more timely compliance with this Court's March 12th Order. Despite the valiant efforts of Nationstar's counsel, the Court is persuaded a sanction is necessary to deter Nationstar from ignoring orders of this Court.

After considering Nationstar's conduct in this case, including its failure to respond to the Debtor's October 31, 2014 motion, its failure to appear at the Court's January 23, 2015 hearing, its failure to comply with the Court's March 12, 2015 Order, and its failure to respond to the Debtor's May 11, 2015 motion, the Court will impose the sanctions articulated in its earlier order, namely, \$200 per day from March 26, 2015 through June 1, 2015.¹ This results in a civil contempt sanction of \$13,400 (67 days x \$200/day). The Court believes this sum is reasonable in light of the nature and extent of Nationstar's contemptuous conduct and anticipates it should be sufficient to deter similar conduct in the future.

The Court must next determine to whom the sanction should be paid. Often, sanctions for a creditor's misconduct are paid to the debtor. See Bean, No. 11-10985, at 3. This is because the type of creditor misconduct that leads to the imposition of sanctions usually causes direct harm to the debtor, such as a creditor's violation of the automatic stay or violation of the discharge injunction. Here, the creditor's misconduct was comprised of two elements: its improper charge to the Debtor's mortgage account, and its failure to comply with a court order to pay the Debtor's attorney's fees. Since the Court disallowed the disputed bank charge, and there is no evidence in the record the Debtor had previously paid his attorney's fees related to the objection to the bank fee, it appears the Debtor was not harmed financially by Nationstar's misconduct. If the Court were to direct Nationstar to pay the civil contempt sanction to the Debtor, the Debtor would be enriched beyond the already awarded attorney's fees and disallowed bank charges, and thus receive a windfall. However, this does not negate the need for the sanction. Imposition of this sanction is essential to deterring Nationstar from ignoring court orders in the future and to ensuring timely compliance with court orders in general.

In the case at bar, the Debtor would likely have been charged an unwarranted fee if he had not had a competent and persistent attorney who advocated zealously on his behalf in this Court. Therefore, to ensure the penalty imposed on Nationstar is aligned with the underlying misconduct, the Court deems it proper to direct the sanction be paid to an entity dedicated to finding competent legal counsel to represent unrepresented parties in bankruptcy cases. It is not uncommon for bankruptcy courts to direct offending parties to pay civil contempt sanctions to third-party non-profit legal organizations or volunteer lawyer projects. See In re Whitehill, 514 B.R. 687, 693 (Bankr. M.D. Fla. 2014) (imposing sanctions payable to the Bankruptcy Legal Educational Series); In re Ulmer, 363 B.R. 777, 786 (Bankr.

¹ The May 29th Order stated the sanctions, if imposed, would encompass the period of March 26th through the date Nationstar paid the Debtor's counsel. The record indicates the Debtor's counsel did not receive the check from Nationstar until June 8th, and that Nationstar timely sent out the check on June 1, 2015 and the delay was due to Nationstar having inadvertently mailed the check to the wrong attorney. In the interest of justice, the Court therefore credits Nationstar with compliance as of June 1st.

D.S.C. 2007) (directing law firm to pay sanction to the South Carolina Pro Bono Association or the South Carolina Centers for Equal Justice); see also In re Kalikow, 602 F.3d 82, 96 (2d Cir. 2010).

Following this line of cases, the Court finds it most appropriate to direct Nationstar to pay the \$13,400 sanction to Vermont's premier provider of pro bono legal services to parties in bankruptcy cases, Legal Services Law Line of Vermont, to fund representation of indigent parties who would otherwise be left to navigate the bankruptcy process without counsel.

In sum, in light of Nationstar's failure to abide by orders of this Court and the foregoing findings, IT IS HEREBY ORDERED that Nationstar pay the sum of thirteen thousand four hundred dollars (\$13,400) to Legal Services Law Line of Vermont, 274 North Winooski Avenue, Burlington, Vermont 05401, within 14 days of entry of this Order.

SO ORDERED.

July 24, 2015
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge