

Bankruptcy Court Slams NetCredit for Violating Debtors' Rights

by Mark C. Leffler, Esq. and Emily Connor Kennedy, Esq.

Bankruptcy Court: NetCredit's conduct "constitutes a reckless disregard of [its] statutory duties in arrogant defiance of federal law."

In each of three separate Chapter 13 bankruptcy cases co-counseled by Boleman Law Firm, P.C., Consumer Litigation Associates, and the Law Offices of Dale W. Pittman, the Bankruptcy Court ordered NetCredit to pay \$100,000 in punitive damages for egregious violations of the automatic stay. Each \$100,000 award included payment of \$37,500.00 to National Consumer Law Center (NCLC) and \$37,500.00 to Legal Services Corporation of Virginia.

The Court awarded varying damages (or debt amounts) in each case related to bank overdraft charges caused by post-bankruptcy debits, lost time at work, mileage expenses, and emotional distress.

The Court also ordered NetCredit to pay a total of over \$178,000 in attorney fees to the plaintiffs' attorneys.

NC Financial Solutions of Utah, LLC, d/b/a NetCredit, violated the automatic stay of bankruptcy by continuing to debit debtors' bank accounts, call debtors, and send emails in attempts to collect on pre-petition lines of credit.

NetCredit admitted the violations occurred well after it had received notices of bankruptcy. However, NetCredit denied that the debtors were significantly damaged, and blamed a single former employee for failing to properly process bankruptcy notices. The Court noted, however, that NetCredit's automated system required the employee to send

borrowers who filed bankruptcy an email warning that the borrower remained liable for the debt, and that non-payment could harm his or her credit. NetCredit's process, therefore, necessarily involved willfully violating the automatic stay—a problem which could not be blamed on a single, scapegoat employee. At trial, the bankruptcy manager for NetCredit's parent company, Enova¹, testified that NetCredit continued to use that email and had no plans to stop using it.

The Court found that "NetCredit, as an institution, either does not fully grasp or refuses to acknowledge the importance and the purpose of the automatic stay."²

The Court awarded punitive damages because, "NetCredit's conduct showed reckless disregard of the rights of the Plaintiffs, targeted individuals who were financially vulnerable (debtors in bankruptcy) and involved repeated actions."³

In assessing the appropriate remedy, the Court considered many factors, including Enova's bankruptcy manager's testimony that NetCredit had thousands of borrowers in bankruptcy, as well as evidence that NetCredit could afford to pay a substantial judgment. The Court held that, despite the relatively small amount of compensatory damages awarded, "[t]he amount of punitive damages assessed in these cases must be sufficient to motivate NetCredit to devote the resources necessary to correct the deficiencies in its bankruptcy procedures."⁴

¹ Enova's North American subsidiaries include NetCredit, CashNetUSA, Enova Decisions, Headway Capital, and The Business Backer.

² Charity v. NC Financial Solutions of Utah, LLC, d/b/a Netcredit (In re Charity), Ch. 13 Case No. 16-31974-KLP, Adv. No. 16-03121-KLP, slip op. at 40 (E.D. Va. Aug. 15 2017).

³ Charity v. NC Financial Solutions of Utah, LLC, d/b/a Netcredit (In re Charity), Ch. 13 Case No. 16-31974-KLP, Adv. No. 16-03121-KLP, slip op. at 40 (E.D. Va. Aug. 15 2017).

⁴ Charity v. NC Financial Solutions of Utah, LLC, d/b/a Netcredit (In re Charity), Ch. 13 Case No. 16-31974-KLP, Adv. No. 16-03121-KLP, slip op. at 41 (E.D. Va. Aug. 15 2017).



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Emily Connor Kennedy joined the Boleman Law Firm in 2010 as an intern after her first year of law school. She has been a committed member of the Boleman team ever since. In 2012, Emily was admitted to the Virginia Bar.