

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

IN RE: KERMIT M. GILES, JR. d/b/a	)	
GILES AUTO SALES,	)	CHAPTER 7
	)	
Debtor	)	CASE NO. 7-03-01084

ORDER RULING UPON COURT’S CORRECTED  
SHOW CAUSE ORDER ENTERED FEBRUARY 4, 2005

The Debtor filed an Objection to Claim no. 5 filed by the Commonwealth of Virginia Motor Vehicle Dealer Board and the latter filed its Response on February 3, 2005, which brought to the Court’s attention its prior order entered in this case on September 24, 2003 which dismissed a prior objection by the Debtor to this same claim “without prejudice to the Debtor’s right to file a good faith and objectively reasonable particularized new objection to such claim specifying the asserted reason(s) why he is not liable on such claim.” Such order further provided, however, that before the Debtor filed any new objection to such claim, “he shall carefully review the provisions of Federal Rule of Bankruptcy Procedure 9011.” The Court has carefully reviewed the Debtor’s Objection and the Commonwealth of Virginia’s Response and affirms its initial conclusion that such Objection clearly fails to qualify as a “particularized objection to such claim specifying the asserted reason(s) why he is not liable on such claim.”

As stated on the record at the Show Cause hearing on March 14, 2005, the Court simply does not believe the Debtor’s contention that he intended to supplement his initial Objection with a more definitive statement of the grounds therefore. Even if such contention were accepted, it does not change the fact that the Debtor filed a new general objection to the same claim which did not particularize any specific objectively reasonable ground therefore. The Court incorporates by

reference in this Order the history of the claim in question and the Debtor's repeated objections to it contained in the Response filed by the Motor Vehicle Dealer Board and the Commonwealth of Virginia and docketed in this case as docket no. 268. The Court further rejects the Debtor's contention that there was insufficient room on the claim objection form to set forth particularized grounds of objection because he could have easily incorporated by reference an attached sheet of paper expressing his objection at length. While the Court may have erred in even allowing the Objection to be set for a hearing in light of its prior order, such mistake does not relieve the Debtor of the consequences of his disregard of this Court's order entered September 24, 2003. Bankruptcy Rule 9011(c)(2) provides that any "sanction imposed for a violation . . . shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Subsection (c)(3) of such Rule provides that if it imposes sanctions, "the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed." In view of the extensive litigation history in this very court between the Commonwealth of Virginia and the Debtor with respect to this very claim which has previously been upheld in this Court in case no. 97-04067 by order entered March 4, 1998 as valid in the exact amount filed in this case and the fact that the alleged issue raised by the Debtor in his testimony and in a post-hearing Memo to the Court concerning the claim preexisted this Court's earlier determinations of such claim's validity, the Court finds that the Debtor's most recent Objection thereto violated Rule 9011 because ( i ) it was filed for the improper purpose of harassing the creditor and causing it needless expense, and ( ii ) it was not warranted by existing law or the nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. In his argument before the Court the Debtor argues that the Claim in question is composed of three sub-claims, the first in time of which was in the amount

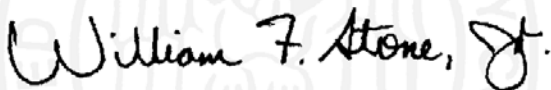
of \$750, that such first claim was paid in full by distributions from the Chapter 13 Trustee in a prior Chapter 13 case of the Debtor, and therefore only the two later sub-claims are still outstanding. Even if the Debtor is correct in his contention, however, it does not affect the validity and amount of the Motor Vehicle Dealer Board's claim in this case because the amount of the filed claim reflects credit for the total amount of prior distributions to the Board in such prior case. If there is any dispute between the Debtor and the Board as to whether any portion or all of the Board's claim is non-dischargeable, such dispute can be determined by an adversary proceeding properly raising such issue, but the parties should first engage in good faith communication to determine whether any such dispute actually exists and if so, whether the same can be amicably resolved between them. If not, subject to the provisions of Bankruptcy Rule 9011 and the prior orders of this Court, a good faith and objectively reasonable complaint initiating an adversary proceeding may be filed. The Court believes that its finding concerning the Debtor's motivation in filing a new general objection to the Board's claim is supported not only by his actions in this case, including disregard of the explicit provisions of this Court's prior order dealing with any new objection to the Board's claim, but also by a pattern of conduct demonstrated by the Debtor over a series of Chapter 13 cases filed by him where he would file a petition, obtain the benefits of the automatic stay in bankruptcy, file one or more pleadings seeking to have this Court take some action against some person with whom or entity with which he was in current conflict, and then promptly dismiss his own case or allow it to be dismissed, often for failure to pay the requisite filing fee, before even reaching a confirmation hearing, such actions being strong evidence that he did not file the petitions with an original good faith intention of obtaining confirmation of and successfully completing a Chapter 13 plan.

The more difficult question is what action ought the Court to take in response to the

most recent objection filed by the Debtor the Board's claim in this case. Under the terms of an agreed order entered by this Court in this case on November 3, 2004, the Debtor was prohibited from filing any new case in this Court for a period of six years after the date this present case was filed and the United States Trustee agreed not to seek any sanction against him for any misconduct by him during the course of this case. The Court lacks confidence that any act short of completely barring the Debtor from filing any further pleadings in this Court will deter him from his cavalier course of conduct, but it concludes that a sanction in the amount of \$350.00 payable to the Commonwealth of Virginia Motor Vehicle Dealer Board as a modest reimbursement towards the undoubtedly much greater expense incurred by it over a decade of mostly pointless litigation in this Court in connection with the Debtor's numerous bankruptcy petition filings, might have some deterrent effect upon him, and if not upon him, upon others similarly situated. Accordingly, it is ORDERED that judgment is hereby entered in favor of the Commonwealth of Virginia Motor Vehicle Dealer Board in the amount of \$350.00 against the Debtor, which amount, if not paid within 90 days of the date of this Order, shall bear interest at the current Federal judgment rate from the date of this Order until paid. It is further ORDERED that the Debtor's Motion to Alter or Amend Court Order is hereby DENIED

The Clerk is directed to send copies of this Order to the Debtor, the Trustee, the Office of the United States Trustee, and to Eric K. G. Fiske, Esq., Senior Assistant Attorney General of the Commonwealth of Virginia, 900 East Main Street, Richmond, VA. 23219.

ENTER this 17<sup>th</sup> day of March, 2005.



UNITED STATES BANKRUPTCY JUDGE

