UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE:	)	
	)	Chapter 7
TIMOTHY JAMES WILLIAMS, JR., and ANDRIAN SHANNON WILLIAMS,	)	
	)	Case No. 15-71767
Debtors.	)	
	)	
JOHN P. FITZGERALD, III,[1] Acting United States Trustee for Region Four,	)	
	)	
Plaintiff,	)	
v.	)	Adversary Proceeding No. 16-07024
	)	
DARREN DELAFIELD, UPRIGHT LAW LLC, LAW SOLUTIONS CHICAGO LLC, JASON ROYCE ALLEN, KEVIN W. CHERN, EDMUND SCANLAN, and SPERRO LLC,	)	
	)	
Defendants.	)	
	)	
IN RE:	)	
	)	Chapter 7
JESSICA DAWN SCOTT,	)	
	)	Case No. 16-50158
Debtor.	)	
	)	
JOHN P. FITZGERALD, III, Acting United States Trustee for Region Four,	)	
	)	
Plaintiff,	)	
v.	)	Adversary Proceeding No. 16-05014
	)	
JOHN C. MORGAN, JR., JOHN C. MORGAN, JR., PLLC, UPRIGHT LAW LLC, LAW SOLUTIONS CHICAGO LLC, JASON ROYCE ALLEN, KEVIN W. CHERN, EDMUND SCANLAN, and SPERRO LLC,	)	(consolidated with Adversary Proceeding No. 16-07024)
	)	
Defendants.	)	

[1] John P. Fitzgerald, III has succeeded Judy Robbins and been automatically substituted by operation of Fed. R. Civ. P. 25(d) as incorporated by Fed. R. Bankr. P. 7025.

MEMORANDUM OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR LIMITED STAY PENDING APPEAL

This matter comes before the Court on the Defendants' Motion for Limited Stay Of Enforcement of Bankruptcy Court Order Pending Appeal (ECF No. 264). Both the Defendants and the Office of the United States Trustee have filed memoranda of law in support of their respective positions. The Court dispenses with oral argument because the facts and legal positions are adequately presented in the materials before the Court and further argument would not aid the decisional process. For the reasons below, the Court will deny the motion for a stay pending appeal.

STATEMENT OF CASE

On February 12, 2018, the Court entered a Memorandum Opinion and Order, which among other things, sanctioned Upright Law, LLC, Law Solutions Chicago, LLC, Jason Royce Allen and Kevin W. Chern (collectively the "Upright Movants"). The Court amended its Order at the request of the Upright Movants on March 12, 2018, extending the enforcement and effectiveness of paragraph 5 of the final Order entered February 12, 2018. In effect, the Court extended the time for the Upright Movants to transition its cases through May 9, 2018. Specifically, the Court's Amended Order provided in, pertinent part, as follows:

> Pursuant to the relief requested in Williams Count VI and Scott Count V, the privileges of LSC, Upright Law, LLC, Kevin W. Chern, and Jason Royce Allen to file or conduct cases, directly or indirectly, in the Western District of Virginia are revoked for a period of five (5) years from the effective date of the revocation. This revocation shall include any firm that Law Solutions Chicago, Upright Law, Jason Allen or Kevin Chern, directly or indirectly, have an ownership interest in or control over. This revocation shall be effective as of May 9, 2018. During the period of time until the revocation becomes effective, the persons and entities subject to this paragraph of this Order: (i) shall not undertake representation of new clients or file any new bankruptcy cases; and (ii) shall not charge clients for services rendered by UpRight in connection with the transition of their cases.

ECF No. 250. The Upright Movants and others noted an appeal to the United States District Court for the Western District of Virginia and thereafter filed the present motion for a stay pending appeal. Because the motion for stay pending appeal was filed well after the notice of appeal – and did not give the Office of the United States Trustee a reasonable opportunity to respond – the Court issued a temporary stay of the effectiveness of the provision cited above through May 25, 2018, pending resolution of the current motion. The Court notes that other provisions of its February 12, 2018 Order were stayed pending appeal, including the payment of monetary sanctions, but the sanction of revoking the Upright Movants' practice privileges in the Western District of Virginia for five years was not. This was intentional on the Court's part.

After a four-day trial in September 2017, and extensive post-trial briefing, the Court issued a Memorandum Opinion in which it found, among other things, that the Upright Movants acted in bad faith. Without rehashing the entire Opinion, the Court notes that it found as follows:

> Considering (1) the hard sell tactics encouraged on its sales people, (2) the transcripts of the actual recordings of the calls with clients, (3) the lack of supervision and control over its salespeople in connection with the unauthorized practice of law, due in no small part to the commission and sales structure imposed upon them, (4) the focus on cash flow over professional responsibility, and (5) the participation in the Sperro Program and the record as a whole, including Upright's efforts to get the Williamses and Scott to assert the attorney-client privilege in a thinly-veiled attempt to cover its own tracks, this Court believes that the Upright Defendants have acted in bad faith and the privileges of LSC, Upright Law, Chern, and Allen to file or conduct cases, directly or indirectly, in the Western District of Virginia shall be revoked for a period of five (5) years.

ECF No. 231, pp. 54-55. The Court did not want Upright filing new cases in this Court going forward effective immediately, but the Court extended that deadline to May 9, 2018 in response to Upright's motion to alter or amend its judgment.

In support of their motion for a stay pending appeal, the Upright Movants contend that the Court's revocation of their privileges to practice in this Court is an improper injunction, and because the United States Trustee was not seeking relief from any of Upright's existing business practices, there is no case or controversy, and thus no jurisdiction to enjoin the Upright Movants from conducting business going forward. Further, they contend the practice suspension is punitive and not tailored to prevent imminent harm. Upright also contends it will suffer irreparable harm and that the public interest would be served by the issuance of a stay. ECF No. 264, p. 13

All of these arguments are without merit.

LEGAL CONCLUSIONS

I. The Applicable Legal Standard

It is well-settled that under Federal Rule of Bankruptcy Procedure 8007 the burden is on the movant to establish grounds for entry of a stay pending appeal. *Culver v. Boozer*, 285 B.R. 163 (D. Md. 2002) (stay pending appeal denied because the movant did not carry his burden). As recently stated by Judge Urbanski in *Fitzgerald v. Alcorn*, No. 5:17-cv-16, 2018 WL 709979 (W.D. Va. Feb. 5, 2018), the party moving for a stay pending appeal "must demonstrate (1) that he will likely prevail on the merits of the appeal; (2) that he will suffer irreparable injury if the stay is denied; (3) that other parties will not be substantially harmed by the stay; and (4) that the public interest will be served by granting the stay." *Id.* at *1 (citing *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970)). *See also, Nken v. Holder*, 556 U.S. 418, 433, 129 S. Ct. 1749, 1761 (2009). Further, a stay pending appeal is an "intrusion into the ordinary processes of

administration and judicial review," and a party is not entitled to stay as a matter of right. *Nken*, 481 U.S. at 427.[2]

II. The Upright Movants have not demonstrated a likelihood of success on appeal.

A bankruptcy court's sanctions order is reviewed on appeal for abuse of discretion. *In re Jemsek Clinic*, 850 F.3d 150, 156 (4th Cir. 2017). A court abuses its discretion when its conclusion is "guided by erroneous legal principles" or "rests upon a clearly erroneous factual finding." *Id. (*citing *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999)). It is within that framework the Court addresses the Defendants' arguments and their likelihood of success on appeal. As Judge Michael aptly observed, "[t]he first factor, movant's likelihood of success on the merits of the appeal, places the court in something of an awkward position – that of foreshadowing the fate of its opinion before the appellate court." *Mowbray v. Kozlowski*, 725 F. Supp. 888, 890 (W.D. Va. 1989).

The Upright Movants contend that the Court, in effect, is enjoining them from practice, and that an improper injunction was issued based on past practices, not existing business practices, and thus there is no case or controversy in effect. The characterization of the Court's

[2] The factors applied in *Long v. Robinson* were the same ones applied by the Fourth Circuit with respect to a court's determination of whether to issue a preliminary injunction. After the Supreme Court's decision in *Winter v. Natural Resources Defense Council, Inc*., 555 U.S. 7, 129 S.Ct. 365 (2008), the Fourth Circuit held that a movant seeking a preliminary injunction "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010). Although the Fourth Circuit has not yet addressed the application of *Winter* to a stay pending appeal, other courts in the circuit have held that the *Winter* standard applies to the determination of whether to grant a stay pending appeal. *See In re Schweiger*, 578 B.R. 734, 737 (Bankr. D. Md. 2017); *Garcia v. Direct Financial Services LLC*, 436 B.R. 825 (Bankr. W.D. Va. 2010); *In re Forest Grove, LLC*, 448 B.R. 729 (Bankr. D.S.C. 2011). *See also, Rose v. Logan*, No. RDB-13-3592, 2014 WL 3616380, at *2 (D. Md. July 21, 2014) ("The *Real Truth* test is also more difficult to satisfy than the *Long* test because the movant must satisfy all four requirements."). Regardless of which standard is applicable in the Fourth Circuit, the Defendants in this case have not met their burden.

ruling as an injunction is essentially a "straw-man" argument, one the Court declines the invitation to pursue. The Court's Order assessing sanctions was in the nature of attorney discipline and regulation of the bar practicing before the Court, not an injunction. Both Count VI of the Williams Complaint and Count V of the Scott Complaint sought sanctions pursuant to 11 U.S.C. § 105(a), including a prohibition of practice "*before this court.*"[3] ECF Nos. 1 (emphasis added). "A court has the inherent authority to disbar or suspend lawyers." *In re Evans*, 801 F.2d 703, 706 (4th Cir. 1986) (*citing In re Snyder*, 472 U.S. 834, 105 S.Ct. 2874, 2880 (1985)). "This authority is derived from the lawyer's role as an officer of the court." *Id*.

> As Judge Wisdom stated for the court in *Matter of Johnson*,
>
> > Bankruptcy Code § 105(a) provides that "[t]he court may issue any order, or judgment that is necessary or appropriate to carry out the provisions of this title." Courts have used this statute as a basis for holding that bankruptcy courts have both statutory and inherent authority to deny attorneys and others the privilege of practicing before that bar. *See In re Derryberry*, 72 B.R. 874, 881 (Bankr. N.D. Ohio 1987) and citations therein. *See also In re Heard*, 106 B.R. 481, 484 (Bankr. N.D. Ohio 1989). The court in *In re Derryberry*, stated: Disbarment proceedings are not for the purpose of punishment, but rather seek to determine the fitness of an official of the court to continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice. 72 B.R. at 881, citing *In re Echeles*, 430 F.2d 347, 349 (7th Cir. 1970).

Matter of Johnson, 921 F.2d 585, 586 (5th Cir. 1991). The Fourth Circuit has expressed a similar view, noting that the American Bar Association standards on attorney discipline advise that "the purpose of lawyer discipline is to 'protect the public and the administration of justice from lawyers who have not discharged . . . their professional duties to clients, the public, the legal system, and the legal profession.'" *In re Liotti*, 667 F.3d 419, 430-31 (4th Cir. 2011).

[3] The Court's practice revocation is limited to the United States Bankruptcy Court for the Western District of Virginia, i.e. "this court." Upright's suggestion that the Court enjoined them from practicing anywhere in the Western District of Virginia, including state or other federal courts, is nonsensical.

Moreover, "the unsettling repetition of [an attorney's] misrepresentations and the need to deter others from engaging in similar conduct militate in favor of public discipline." *Id.*

Further solidifying the Court's belief that a five-year practice bar is appropriate is a recent decision by the United States Bankruptcy Court for the Northern District of Alabama in *In re White*, No. 17-40093-JJR, 2018 WL 1902491 (Bankr. N. D. Ala. April 19, 2018). In *White*, Upright and its local partner agreed to a settlement with the local Bankruptcy Administrator over the nature and scope of their Attorney Disclosures. Upright agreed to pay $25,000 per case, for a total of $50,000 in two separate cases, plus a bar on filing any new cases for six months, other than in cases for which clients had already retained Upright. *White*, at *4. The Attorney Disclosures improperly excluded certain services that should have been provided for no extra fee. The settlement agreement also included a provision that Upright would provide all legal services that had been routinely excluded in the Attorney Disclosures without charging additional fees to clients who retained Upright prior to a certain date. However, after the settlement was approved, Upright proceeded to breach it and filed six (6) new cases for already retained clients using Attorney Disclosures it was expressly prohibited from using. *Id*. at *5. Chief Judge Robinson observed in *White* that the Upright defendants were unwilling "to deviate from their high-volume, monolithic business model," and that "[s]anctions of $50,000, followed by a six-month bar on filing new cases was insufficient to get the Defendants' attention; they simply ignored the remainder of the Settlement." *Id*. at *6. Thereafter, the court in *White* fined Upright an additional $150,000.00, $25,000 each in 6 separate cases, and revoked Upright's filing privileges in that court for a total of eighteen (18) months. *Id.* at *9-10.[4] The magnitude

[4] Upright's privileges to file new cases were also recently suspended in the Bankruptcy Court for the Western District of Louisiana for a period of 90 days. *See In re Banks*, No. 17-10456, 2018 WL 735351 (Bankr. W.D. La. Feb. 6, 2018). *Banks* is currently on appeal.

and scope of Upright's misconduct in this case merited immediate and more extensive sanctions than that meted out in *White*, and the Court believes that the sanction it issued here was both appropriate and measured under the circumstances of this case.[5] In its motion, Upright has pointed to no errors of fact, or of the application law to fact, in the record made by the Court, and Upright's protestations that it has stopped its unethical behavior does not absolve it of responsibility for the consequences of actions already taken. In order to receive a stay pending appeal, the movant must make a "strong showing" that it would succeed on the merits on appeal. *BDC Capital, Inc. v. Thoburn Ltd. Partnership*, 508 B.R. 633, 637 (E.D. Va. 2014). The Upright Movants have not carried that burden.

III. Upright has not demonstrated irreparable injury.

Upright contends that it will suffer irreparable monetary and reputational loss if the revocation of its right to practice is not stayed. It complains it will be required to refund attorney's fees that can never be recouped and that it will be forced to forego additional funds in uncollected attorney's fees from its existing clients. It further contends it will be damaged by the loss of future business, including an estimated 1,000 lost business relations over the next five years.[6] However, the monetary and administrative costs of complying with a court order absent a stay are not sufficient to establish irreparable injury. In *Long v. Robinson*, 432 F.2d 977, 980 (4th Cir. 1970), the Court observed that "mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *See also,*

[5] The five-year revocation in this case is also consistent with Judge Beyer's sanction of Volks Anwalt, another firm using the "national law firm" business model, in the Western District of North Carolina Bankruptcy Court. *In re Banner*, No. 15-31761, 2016 WL 3251886, at *9 (Bankr. W.D. N.C. June 2, 2016).

[6] Upright projects its refunds to run between $133,924.80 and $212,965.30 in attorney's fees, and another $238,000 in uncollected attorney's fees from existing clients. ECF No. 264, p. 29.

Mowbray, 725 F. Supp. at 890-91. In *Long*, the Fourth Circuit acknowledged the City of Baltimore would be required to build public facilities, purchase equipment, and hire additional employees all at large cost. The court nevertheless determined that even though such costs would not be recoverable were the order reversed on appeal, it did not warrant a stay.

The same is true here. Upright has shown no basis for being able to continue "business as usual" in light of the Court's award of sanctions. The Court has previously found Upright's revenues are "substantial." ECF No. 231, p. 15. Upright contends it is a nationwide firm with a nationwide client base; the Court's ruling does not bar it from practice in any other bankruptcy courts other than the Western District of Virginia. Compared to other districts across the country, this district is not known as a high-volume district. Moreover, *Long* also held that where the movant claims damage from an "injury of [his] own making, then '[i]t would seem elementary that a party may not claim equity in his own defaults.'" *Long*, 432 F.2d at 981. The need for sanctions against Upright in this case is due to self-inflicted actions. As to Upright's alleged loss of reputation, and despite Upright's current fights to maintain its reputation on multiple fronts, see *Banks* and *White*, *infra*, any reputational damage caused by this case would be cured by prevailing on appeal. Irreparable harm has not been established.

IV. Prospect of harm to other parties and the public interest favor denial of a stay

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party." *Nken*, 556 U.S. at 435, 129 S. Ct. at 1762. Even though Upright has failed to meet the first two standards, the Court will take the last two factors together. This was an enforcement action brought by the United States Trustee. The United

States Trustee is a Department of Justice official charged with, among other things, supervising bankruptcy case administration. 28 U.S.C. § 586(a)(3). United States Trustees "serve as bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 95-595, at 88 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6049; *In re A-1 Trash Pickup, Inc.*, 802 F.2d 774, 775 (4th Cir. 1986).

The Court recognizes that some Upright clients will be inconvenienced if Upright's privileges to practice are revoked, but that is the case in any disbarment situation. However, the Court has found that Upright engaged in serious misconduct, emphasizing cash flow over professional responsibility, and that not only were consumers impacted by the method and manner of its delivery of its services in this district, but numerous vehicle lenders were also adversely impacted. Protection of the public is a hallmark of lawyer discipline and the Court's duty to regulate the bar practicing before it. There are many capable consumer bankruptcy counsel able to practice in this district; Upright should have no trouble transitioning its cases and those not yet filed to substitute counsel, provided it does not procrastinate in doing so.[7] These factors favor denial of the issuance of a stay.

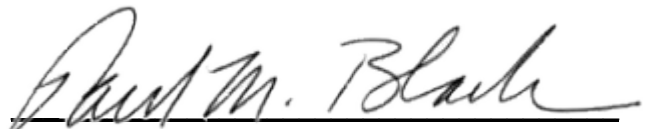
[7] The Court cannot help noting Chief Judge Robinson's comment in *In re White* that "UpRight seeks business out of this District because of the high number of cases it produces and thus the potential for profits, not as a public service endeavor. While a profit motive itself is not evidence of bad faith, the attempt to disguise UpRight's bankruptcy mill by painting its deficiencies with the brush of human kindness simply goes beyond the pale." *White*, at *7.

CONCLUSION

For all of the above reasons, it is ORDERED that the Defendants' Motion for Limited Stay Of Enforcement of Bankruptcy Court Order Pending Appeal is denied. The Court's temporary stay of paragraph 5 of its Amended Order shall remain in effect through May 25, 2018 only, after which it shall be dissolved.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to all counsel for the parties and to the United States District Court for the Western District of Virginia.

Entered May 14, 2018.



UNITED STATES BANKRUPTCY JUDGE