

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

IN RE: WILLIAM ALEXANDER WHITE,) CHAPTER 11
)
) CASE NO. 08-71107

WILLIAM ALEXANDER WHITE,)
) Movant)
)
) v.)
)
WESTERN VIRGINIA WATER)
) AUTHORITY,)
) Respondent.)

DECISION AND ORDER

On August 4, 2010, the Debtor, proceeding pro se, filed a pleading he styled, “Motion to Join Parties, Motion to Disqualify Respondent’s Counsel, Motion for Summary Judgment, Movant’s Reply to Respondent’s Response to Movant’s Motion for Contempt and Joinder of Proceedings.” He did not and has not set any of these motions for a hearing or requested a hearing upon them. In general, the Debtor is accusing the Water Authority, and now its counsel, of attempting to perpetuate a fraud upon him and the Court in connection with an exhibit filed with the Court relating to the due date for charges upon an account the Debtor has with the Authority. He has even gone so far as to suggest that the crime of bankruptcy fraud may have been committed in connection with the filing of the document in question. In addition to a judgment in the amount of \$28,450 which he seeks against the Water Authority and its counsel, the Debtor asks that the Court make a referral of counsel for the Authority to the United States Attorney’s Office for “prosecution for criminal contempt and investigation for the crime of bankruptcy fraud pursuant to 18 USC Section 157.” After a review of the Debtor’s

contentions, the Water Authority's Response, and the original filing and exhibit which have precipitated these Motions, the Court has determined that the motions to join counsel for the Authority and his firm as party respondents to his underlying motion, to disqualify counsel from continuing to serve as counsel for the Authority in this matter, and to enter summary judgment against the Authority and its counsel are without merit. Accordingly, they will be denied.

The passage of the Authority's Response filed on May 7 which has ignited the Debtor's fury reads as follows:

In his April 26, 2010 submission to the Court, White acknowledges on page 3 that if the Water Authority ". . . can demonstrate any sum was 45 days past due on March 25, 2010, I agree this case should be dismissed . . ." The past due bill that resulted in the disconnection of services on March 25, 2010 was the bill for the service period of December 22, 2009 to January 23, 2010, and the statement for that service period had a bill date of February 4, 2010. A representative copy of the February 4, 2010 bills is attached hereto and incorporated herein as **Exhibit A**. The billing information is the same basic information as on White's original bill, but the representative copy uses a newer format to present the information.

A Water Authority's customer's account is subject to disconnection for an untimely payment if it is forty-five (45) days past due. Bills for the service period are due from the date of billing. The date of billing was February 4, 2010. Forty-five days from February 4, 2010 was March 21, 2010, which was a Sunday. Because March 21, 2010 was a Sunday, the forty-five day deadline was extended to Monday, March 22, 2010, the next business day. White was provided with notices on March 8, 2010 of the cut off date for services and the date by which he would have to pay to cure his delinquencies and avoid disconnection of services. White failed to make the required payments by March 24, 2010 at 5:00 p.m. White's services were not disconnected on March 25, 2010 for the failure to pay for water and sewer services provided between January 23, 2010 and March 24, 2010, rather the services were disconnected for White's failure to pay for the services provided prior to January 24, 2010. Because of his defaults and disconnections, all sums for services billed to White prior to the March 25, 2010 disconnection had to be paid by White before his services could be reconnected.

Attached to this Decision and Order are copies of the exhibit filed on behalf of the Water

Authority (Exhibit A) and of the original actual statement rendered by the Authority to the Debtor (Exhibit B). The parties appear to be in agreement that the format of Exhibit A is the billing format adopted by the Authority at some point after February 4, 2010. The difference between the two statements appears to be that in Exhibit A the unpaid portion of the preceding month's statement is designated as being due immediately with the current month's charges being due twenty days after the billing date while the actual bill combined the current month's charges with the unpaid balance of the prior month's charges into one aggregate amount with a designated due date for that amount twenty days after the statement date. Both statements reflect the same amounts of charges and both indicate that an unpaid balance from the prior month's statement was carried over to the February 4 statement. The Debtor asserts that, in the context of the present dispute as to when water charges were due and the period of time between such due date and the termination of water service to the Debtor's apartments, the Authority and its counsel have attempted to perpetuate a fraud upon him and the Court because the actual February 4 statement did not state that any amount was already due as of the statement's date and the written argument of the Authority's counsel accompanying the exhibit did not expressly make that difference clear. In essence, he contends that not only were the exhibit and argument misleading, but also that they were intended to be misleading.

According to both exhibits, the prior bill amount was \$77.69, of which \$35.57 had been paid, apparently on January 25. Accordingly, the unpaid balance forward from that statement was \$42.12, which, combined with current charges of \$47.39, yielded a new balance due of \$89.51. Exhibit B, the original statement, contained a due date of February 24 for that full amount. Exhibit A, the newer format, breaks down this aggregate amount into the prior statement's unpaid balance as being immediately due and the most recent charges as being due

on February 24. Although neither party has produced a copy of the prior month's statement, it seems so probable as to be almost certain that the balance of that statement was due at a date prior to the date of the February statement, most likely on or about the date that the partial payment was made. It would seem illogical in the extreme that it was the intention of the Authority or the understanding of the customer, in this case the Debtor, to extend the due date of an already past due balance of the January statement to a new due date twenty days after the date of the February statement. If that were the case, Authority customers would be deemed to be current as of the date of the issuance of a new statement for prior charges already delinquent at the time the new statement was rendered. As the saying goes, "that would be a very strange way to run a railroad."

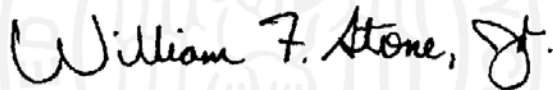
The Court agrees with counsel for the Authority that the unpaid balance of the January statement was already past due prior to the February statement and that his argument to that effect is not out-of-bounds. The written argument accompanying Exhibit A expressly acknowledged that such exhibit was in a different format than the actual statement rendered in February. Accordingly, the Court concludes that there is no reasonable basis for the Debtor's assertion that there is probable cause to request the United States Attorney for this District to review bringing charges against either the Authority or its counsel for criminal contempt of the bankruptcy court pursuant to 18 U.S.C. § 401 or the crime of bankruptcy fraud pursuant to 18 U.S.C. §157.¹ Accordingly, the Court will deny the Respondent's motions seeking any such action by this Court, the joinder of the Authority's counsel and his firm as parties to this proceeding, the disqualification of such counsel in this matter, or to add the Respondent's

¹ Pursuant to Bankruptcy Rule 9018 such contentions shall be deemed to be stricken from the Respondent's Motions.

contentions detailed above with respect to Exhibit A as an additional ground to hold the Authority in contempt of this Court and award damages to him as a sanction therefore. It is SO ORDERED.²

The Clerk is directed to send copies of this Decision and Order to the Debtor, counsel for the Respondent, and to the Assistant United States Trustee for this District.

ENTER this 24th day of August, 2010.



William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE

² In making this ruling the Court recognizes that the Debtor's criticism of the manner in which the Authority and its counsel have advanced their argument is not entirely without basis. It appears to the Court that it would have been better for the Authority's counsel to have submitted a copy of the actual bill along with Exhibit A or at the least to have pointed out expressly in his commentary the manner in which the later format differed from the prior format. Such an approach would have avoided any basis for a perception that the argument advanced was anything less than completely forthright. The Court is also troubled by counsel's making, without any accompanying explanation or justification, the statement that "[b]ills for the service period are due from the date of billing" in his written argument even though both Exhibits A and B state that payment, at least for current charges, is not due until twenty days after the statement date. In the sense that payment for service already provided is owed once the service has been provided, the statement may not be objectionable, but in the context of when charges become "past due" and thereby trigger possible termination of water service, it is a questionable assertion. Nevertheless, even if it be true that this line of argument might reasonably be criticized, that is a very far thing indeed from any conclusion that it was criminal or ground for disqualification or that it furnished any basis for some sanction in the nature of damages to be paid to the Debtor.



Western Virginia Water Authority
 Utility Billing Office
 P.O. Box 1140
 Roanoke, VA 24006-1140

WILLIAM ALEXANDER WHITE
 PO BOX 8631
 ROANOKE VA 24014-0631

Account Number	REDACTED	Page	103011
Bill Date			2/04/10
Cycle/Route			74-29
Past Due Amount-Due Immediately			42.12
Current Amount-Due Date 2/24/10			47.39
Total Amount Due			89.51

AMOUNTS OWED AFTER THE DUE DATE ARE SUBJECT TO A 10% (\$1.50 MINIMUM) LATE PAYMENT PENALTY

RATE CLASS: DOMESTIC-MONTHLY	SERVICE ADDRESS: 515 10TH ST SW	677
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Last Bill Amount 77.69
 Last payment amount/date: 35.57 1/25/10

SERVICE PERIOD	DAYS	METER NUMBER	CURRENT METER READING	PREVIOUS METER READING	UNITS READ
WA 12/22/09 - 1/23/10	32 E	19275916	23390	19390	GAL
USAGE FOR 2/09	15				

Service	Consumption(1000 Gallons)	Charge	Total
WATER BASE CHARGE		6.25	
WATER 1ST 10,000 GALS.	4.00	12.00	
TOTAL WATER			18.25
SEWER BASE CHARGE		9.25	
SEWER ALL CONSUMPTION	4.00	14.00	
TOTAL SEWER			23.25
CITY UTILITY TAX		2.19	2.19
PENALTY: 2/01/10		3.70	
Total Current Charges			47.39
Balance Forward			42.12
Total Amount Due			89.51

***NOTICE! PLEASE NOTE CHANGES IN RATES FOR WATER AUTHORITY. CUSTOMERS ARE EFFECTIVE JANUARY 1, 2010. For more information, visit our website at www.westernvawater.org

Average cost per day 1.48

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Return payment with this portion to: WESTERN VIRGINIA WATER AUTHORITY



Western Virginia Water Authority
 Utility Billing Office
 P.O. Box 1140
 Roanoke, VA 24006-1140

Account Number	REDACTED	10301
Bill Date		2/04/10
Cycle/Route		74-2
Past Due Amount-Due Immediately		42.1
Current Amount-Due Date 2/24/10		47.3
Total Amount Due		89.5

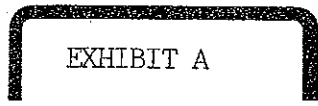
Check box to indicate address change and complete the form on the reverse side

AMOUNT ENCLOSED: \$

24014063131

WILLIAM ALEXANDER WHITE
 PO BOX 8631
 ROANOKE VA 24014-0631

Western Virginia Water Authority
 P.O. Box 17381
 Baltimore, MD 21297-1381



REDACTED REDACTED



Western Virginia Water Authority
Utility Billing Office
P.O. Box 1140
Roanoke, VA 24006-1140

WILLIAM ALEXANDER WHITE
PO BOX 8631
ROANOKE VA 24014-0631

Water/Sewer Billing

Bill Date	2/04/10
Account Number	1000255923-000003018
Cycle/Route	74-29
Amount Due	89.51
Due Date	2/24/10

AMOUNTS OWING AFTER THE DUE DATE ARE SUBJECT TO A 10% (\$1.50 MINIMUM) LATE PAYMENT PENALTY

RATE CLASS: DOMESTIC-MONTHLY	SERVICE ADDRESS: 515 10TH ST SW	677
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Last Bill Amount: 77.89
Last payment amount/date: 35.57 1/25/10

SERVICE PERIOD	DAYS	METER NUMBER	CURRENT METER READING	PREVIOUS METER READING	UNITS READ
WA 12/22/09 1/23/10	32 E	19275916	23990	19390	GAL
USAGE FOR 2/09	15				

Service	Consumption(1000 Gallons)	Charge	Total
WATER BASE CHARGE		6.25	
WATER 1ST 10,000 GALS.	4.00	12.00	
TOTAL WATER			18.25
SEWER BASE CHARGE		9.25	
SEWER ALL CONSUMPTION	4.00	14.00	
TOTAL SEWER			23.25
CITY UTILITY TAX		2.19	2.19
PENALTY 2/01/10		3.70	
Total Current Charges			47.39
Balance Forward			42.12
Total Amount Due			89.51

***NOTICE! PLEASE NOTE CHANGES IN RATES FOR WATER AUTHORITY CUSTOMERS ARE EFFECTIVE JANUARY 1, 2010. For more information, visit our website at www.westernvawater.org

Average cost per day 1.48

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Return payment with this portion to: WESTERN VIRGINIA WATER AUTHORITY



Western Virginia Water Authority
Utility Billing Office
P.O. Box 1140
Roanoke, VA 24006-1140

Bill Date	2/04/10
Account Number	1000255923-000003018
Cycle/Route	74-29
Amount Due	89.51
Due Date	2/24/10

Check box to indicate address change and complete the form on the reverse side

AMOUNT ENCLOSED: \$

24014063131

WILLIAM ALEXANDER WHITE
PO BOX 8631
ROANOKE VA 24014-0631

Western Virginia Water Authority
P.O. Box 17381
Baltimore, MD 21297-1381

10002559230000030180000089515