UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
RUBY G. EMANUEL,	:	Chapter 7
	:	Case No. 97-44969 (SMB)
Debtor.	:	

MEMORANDUM DECISION REGARDING ORDER AWARDING SANCTIONS

A P P E A R A N C E S:

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STUART M. BERNSTEIN
United States Bankruptcy Judge:

In a Memorandum Decision dated Jan. 29, 2010 (the "Opinion"), familiarity with which is assumed,[1] the Court awarded sanctions against Kenneth Heller and Susan Harmon, Esq. in favor of the Trustee's special and general counsel, respectively, J&M and Windels Marx. Windels Marx settled a proposed order, (see ECF Doc. # 135), and

[1] The capitalized terms defined in the Opinion have the same meaning in this decision.

Harmon and Heller filed a proposed counter-order and separate objections. (See Objections to Proposed Sanctions Order Submitted by Counsel to the Chapter 7 Trustee, sworn to Feb. 11, 2010 ("Heller Objection") (ECF # 140); Affidavit in Opposition to Court's *Sua Sponte* Order to Show Cause Pursuant to 28 U.S.C. §1927 and in Support of Cross Motion for Sanctions Against Jacoby & Meyers, sworn to Feb. 11, 2010 ("Harmon Objection") (ECF Doc. # 141).)

The proposed order accurately reflects the disposition of the Sanctions OSC in accordance with the Opinion. Neither Heller nor Harmon disagrees. Instead, both used the opportunity primarily to argue the merits of the Sanctions OSC,[2] to attack J&M[3] or to repeat several irrelevant arguments (e.g., the debtor's status as a "seaman's widow" and "ward of admiralty," the reasonableness of the settlement approved by the Court in November 2008, and this Court's refusal to apply maritime law). These arguments have no bearing on the form or accuracy of the proposed order.

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[2] Among other things, Heller and Harmon contended that the Court lacked the power to award sanctions under its inherent authority or pursuant to 28 U.S.C. § 1927. A bankruptcy court has inherent authority to impose sanctions against attorneys and their clients. Ginsberg v. Evergreen Sec. Ltd. (In re Evergreen Sec., Ltd.), 570 F.3d 1257, 1263 (11th Cir. 2009); see Mapother & Mapother, P.S.C. v. Cooper (In re Downs), 103 F.3d 472, 477 (6th Cir. 1996) ("Bankruptcy courts, like Article III courts, enjoy inherent power to sanction parties for improper conduct.") (citation omitted); In re Ngan Gung Restaurant, Inc., 195 B.R. 593, 598-99 (S.D.N.Y. 1996) ("It is generally agreed that bankruptcy courts possess the same inherent sanction powers that district courts enjoy."). Similarly, bankruptcy courts may impose sanctions under 28 U.S.C. § 1927. In re Cohoes Industrial Terminal, Inc., 931 F.2d 222, 230 (2d Cir. 1991).

Heller also argued that the original notice of hearing served by Windels Marx, relating to the Court's sua sponte sanctions motion, only referred to Harmon and relied exclusively on 28 U.S.C. § 1927, which does not apply to Heller, a non-attorney. (Heller Objection at ¶¶ 5-8.) His objection ignored the Court's Sanctions OSC, issued to clarify the Windels Marx notice, which referred to both Heller and Harmon and stated that the potential sanctions against Heller were based on the Court's inherent authority. (See Sanctions OSC, (ECF Doc. # 95.)

[3] In addition to the oft-repeated arguments relating to J&M's misfeasance and nonfeasance, Harmon and Heller sought sanctions against J&M.

Harmon and Heller also contend, for the first time, that the Transfer Motion was filed in this Court by mistake. The Court had previously concluded that the Transfer Motion was legally meritless because the Bankruptcy Court "does not have the authority to transfer a case to the District Court; only the District Court, through its power to withdraw the reference, can transfer a case to itself from the Bankruptcy Court." (Opinion at 18.) Harmon and Heller now maintain that the making of the Transfer Motion before this Court was an honest and ministerial mistake caused by Harmon's extreme mental and emotional exhaustion that ultimately led to several hospitalizations. She had intended to pursue the motion in the District Court but inadvertently failed to file a civil cover sheet, and this failure prevented the transfer of the Transfer Motion to the District Court. (Harmon Objection at ¶ 3; Heller Objection at ¶ 3.) Believing the Transfer Motion would be reassigned to the District Court and heard on a different date than the one she had selected, Harmon did not appear at the Bankruptcy Court on the return date. (Harmon Objection at ¶¶ 16, 61; Heller Objection at ¶ 3.)

The argument is an afterthought not worthy of credence. First, Harmon has not provided any medical evidence to support her claim. I note, in this regard, that I previously rejected a similar claim for the same reason.[4] (Opinion at 13-15.)

Second, the Transfer Motion belies any claim of mistake. It was made returnable before me on a specific date and at a specific time, and sought an order from me transferring the "entire action to US District Court, Southern District of New York."

[4] In fact, Harmon functioned as an attorney during June 2009 without any apparent difficulty, and testified at the July 1, 2009 fee hearing. During her testimony she remained calm and focused, and did not have any difficulty answering questions on direct or cross-examination, or invoking her Fifth Amendment privilege against self-incrimination when she thought she should.

(Transfer Motion at 1 of 55 (ECF Doc. # 87).) In contrast, the Withdrawal Motion, though filed in the Bankruptcy Court as the local bankruptcy rules required, (Opinion at 7), sought to schedule the motion before the District Court, (see ECF Doc. # 52), and asked the District Court to "withdraw the reference to the Bankruptcy Court and transfer this proceeding to the District Court for adjudication, pursuant to 28 USC § 157(d)."[5] (See Withdrawal Motion at 1.) Harmon and Heller knew the difference.

Furthermore, Harmon and Heller should have been aware of any mistake prior to the return date. The Trustee had objected to the Transfer Motion, arguing that the District Court had already denied the Withdrawal Motion, and Heller "cannot now seek essentially the same relief from the Bankruptcy Court." (Chapter 7 Trustee's Opposition to the Motion of Kenneth Heller to Transfer Proceedings to the District Court, dated June 16, 2009, at ¶ 15 (ECF Doc. # 91).) Thus, Heller and Harmon knew or should have realized that the Trustee viewed the Transfer Motion as returnable before the Bankruptcy Court. They nevertheless failed to identify their so-called mistake, either to the Trustee or the Court, implying that there was none.

Based on the foregoing, the Court will sign the proposed order submitted by

[5] The Withdrawal Motion asked "this Court" to withdraw the reference, and the context clearly shows that "this Court" referred to the District Court.

Windels Marx. The Court has considered the other arguments made by Heller, Harmon and J&M, and concludes that they lack merit.

Dated: New York, New York
March 12, 2010

/s/ Stuart M. Bernstein
STUART M. BERNSTEIN
United States Bankruptcy Judge