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ADV. NUMBER: 95-1088

JUDGE: G. B. Kahn

PARTIES: Perez Grandison, State of Alabama Department of Public Safety, Driver's License
Division, Safety Responsibility Unit

CHAPTER: 13

ATTORNEYS: F. Anderson

DATE: 5/4/95

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re

PEREZ GRANDISON
Debtor

CASE NO. 95-10057

PEREZ GRANDISON
Plaintiff

vs.

ADV. NO. 95-1088

STATE OF ALABAMA DEPARTMENT
OF PUBLIC SAFETY, DRIVER'S
LICENSE DIVISION, SAFETY
RESPONSIBILITY UNIT
Defendant

ORDER

At Mobile, in said District on the 4th day of May, 1995 before Gordon B. Kahn, Chief Bankruptcy Judge:

This matter having come on for preliminary hearing upon the debtor's complaint for violation of the automatic stay and reinstatement of driver's license and on the defendant's motion for summary judgment; due notice having been given; the debtor having appeared with his attorney, Franklin Anderson, and J.C. McAleer, Chapter 13 Trustee, having appeared; and based upon the pleadings, including the complaint and exhibits thereto and the defendant's motion for summary judgment and exhibits thereto, and briefs of counsel, and the defendant having requested in writing that the matter be submitted on briefs, the Court now, finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Prior to the debtor's Chapter 13 bankruptcy, he was involved in an automobile accident and was held liable for damages in the Mobile County Small Claims Court.

2. The debtor was notified on December 9, 1994, that his driver's license was being suspended by the defendant pursuant to Ala. Code § 32-7-1, et seq., for failure to provide proof of financial responsibility. The suspension was to be effective January 12, 1995.

3. The debtor filed his Chapter 13 Bankruptcy petition on January 11, 1995. The damage claim from the automobile accident was properly scheduled. The debtor's 100% plan was confirmed on March 7, 1995.

4. Despite the filing of the bankruptcy, the debtor's license was suspended on January 12, 1995 for failure to file the required proof. On February 17, 1995, the debtor was notified that, because he had submitted a Chapter 13 Bankruptcy plan, his license would be reinstated upon payment of a \$100.00 reinstatement fee.

CONCLUSIONS OF LAW

Defendant first claims that the Eleventh Amendment prevents the debtor from bringing suit against it for violation of the stay. This is partially true. The debtor can sue for the violation, but he cannot recover a monetary judgment. Hoffman v. Conn. Dept. of Income Maintenance, 492 U.S. 96, 109 S.Ct. 2818, 106 L.Ed.2d 76 (1989); In re Kuck, 116 B.R. 821 (Bankr.S.D.Ala.1990).

Next, the defendant claims that the suspension does not violate the automatic stay because it was enforcing its police power, thus it can require payment of the reinstatement fee. As support, it cites and attaches an unpublished opinion by Judge Clifford Fulford in the Northern District of Alabama. In re Thomas, Case No. 89-10888 (Bankr.N.D.Ala. Dec. 29, 1989). The facts in that case are almost identical to those in the instant case. Judge Fulford found without discussion that the defendant was enforcing its' police powers which was not a violation of the stay. He cited two non-Alabama cases to support this proposition. Those cases make blanket statements that revocation of the license was within those states police power and thus, not a violation of the stay. They also

provide no reasoning. See, Norton v. Tennessee Department of Safety, 76 B.R. 624, 631 (Bankr.M.D.Tenn. 1987), aff'd, 84 B.R. 119 (M.D.Tenn.1988), rev'd on other grounds, 867 F.2d 313 (6th Cir.1989); Smith v. Pennsylvania Department of Transportation, 58 B.R. 78, 80 (Bankr.E.D.Pa.1986); rev'd on other grounds, 66 B.R. 244 (E.D.Pa.1986). Judge Fulford then goes on to reason and explain why the reinstatement fee does not violate section 525 of the Bankruptcy Code since it applies to all people who lose their license and not just to debtors, therefore it does not discriminate. See, 11 U.S.C. § 525(a). The debtor had to pay the \$100 to get her license back. This case was a 1989 case which is prior to Kuck.

In Kuck, Judge Arthur Briskman found that the automatic suspension of the debtor's license was not an enforcement of police power but rather was an action "primarily to facilitate the collection of a private debt for the alleged victim." The suspension occurred one week after the bankruptcy was filed because the debtor failed to file form SR13/proof of financial responsibility. Kuck, 116 B.R., at 824. Judge Briskman cited Alabama case law as well as the Department of Public Safety's admission that the only purpose served by requiring SR13 described in sec. 32-7-5 was to ascertain the financial capability of the responsible party in redressing the damages resulting from the wreck. Kuck, 116 B.R., at 824, citing, Treadway v. Brantley, 437 So.2d 93, 96 (Ala.1983). This type of action was found to be "not primarily related to public safety" and thus not an exercise of police power protected by the automatic stay. Since the action violated the automatic stay, it was void and without effect. The license was ordered restored without payment of any reinstatement fee. Kuck, 116 B.R., at 825. Punitive damages were not awarded based on the Eleventh Amendment, but an attorney's fee was awarded on the authority of Hutto v. Finney, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1979) which provides that "the 11th Amendment is not a bar to the awarding of counsel fees against state governments.

This Court is of the opinion that Kuck is the better reasoned and correct decision and therefore declines to follow the opinion in Thomas, supra. The defendant in the instant case violated the automatic stay of 11 U.S.C. § 326(a) by suspending the debtor's license post-bankruptcy and summary judgment is due to be granted in favor of the debtor and against the defendant. The debtor is entitled to have his license restored without payment of any reinstatement fees or costs and the debtor's request for damages is denied; provided, however, that an attorney's fee in the amount of \$500.00 is awarded to the debtor's attorney. Kuck, 116 B.R., at 825-26. Now, therefore, it is

ORDER

ORDERED, that the defendant's motion for summary judgment be, and it hereby is, DENIED; and it is further

ORDERED, that SUMMARY JUDGMENT on the plaintiff's complaint be, and it hereby is, GRANTED in favor of the debtor, Perez Grandison; and it is further

ORDERED, that the debtor's driver's license be RESTORED within ten (10) days of the date of this Order without payment of any reinstatement fees or costs; and it is further

ORDERED, the debtor's request for damages be, and it hereby is, DENIED; provided, however, that attorney's fees be AWARDED to the debtor's attorney, Franklin Anderson, in the amount of \$500.00, said amount to be paid within ten (10) days of the date of this Order.

CHIEF U.S. BANKRUPTCY JUDGE