

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
MARY KAY PULLEN,	)	CASE NO. 10-82188 - MHM
	)	
Debtor.	)	
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MARY KAY PULLEN,	)	
	)	
Plaintiff,	)	
v.	)	ADVERSARY PROCEEDING
	)	NO. 10-6355
CAIN HARRIS,	)	
GARY C. HARRIS,	)	
	)	
Defendants.	)	

**ORDER ON MOTION FOR SANCTIONS**

On October 26, 2011, Plaintiff filed a *Motion for Sanctions* (Doc. No. 52) and an amended *Motion for Sanctions* (Doc. No. 53). In response, Defendant Gary Harris ("Mr. Harris") filed *Gary Harris' Statement Under Penalty of Perjury* (Doc. No. 55).

The pleadings show that a deposition in this adversary proceeding was scheduled for 1:00 p.m. Monday, October 18, 2010, in Gainesville. On Saturday, October 16, 2010, Mr. Harris was involved in an automobile collision that resulted in an emergency room visit and diagnoses of concussion, facial cuts requiring stitches, a broken finger, and pain in the upper chest and back. On Sunday October 17, 2010, Mr. Harris expected

to be able to attend the deposition scheduled for the following afternoon, but as the day progressed, he began to feel worse and on Monday morning, he felt too bad to attend the deposition.

On Monday morning at approximately 9:00 a.m., acting on instructions from Mr. Harris, Mr. Harris' daughter and employee, Delia Harris-Jacobs, sent an email to Plaintiff's counsel explaining that Mr. Harris would be unable to attend the deposition. That email, however, was misdirected and never received by Plaintiff's counsel. At approximately 11:00 a.m., Ms. Harris-Jacobs telephoned the office of Plaintiff's counsel to communicate that Mr. Harris would not be attending the deposition, but Plaintiff's counsel had already left to drive to Gainesville and his office could not reach him. Not until Plaintiff arrived at the time and place of the deposition in Gainesville, he discovered that Mr. Harris would not be attending.

The injuries sustained by Mr. Harris provide a substantial justification for his failure to attend the deposition. *See* Bankruptcy Rule 7037. Mr. Harris' failure to adequately communicate to Plaintiff's attorney his inability to attend the deposition, however, is problematic. The error of Mr. Harris misdirected the early email to Plaintiff's counsel. The follow-up telephone call at 11:00 a.m., however, should have reached Plaintiff's counsel. That Plaintiff's counsel would depart at least two hours before the scheduled time for the deposition for what should have been a trip of about one hour, and that Plaintiff's counsel would be completely unreachable during that trip, was, arguably, not a reasonable assumption for Mr. Harris to make; however, Mr. Harris

should have followed up before 11:00 a.m. with his telephone call. Therefore, although Mr. Harris's efforts to communicate with Plaintiff's counsel were not wholly unreasonable under the circumstances and Plaintiff's counsel was partially responsible for his unavailability to receive the communication, the efforts of Mr. Harris still fall short of the effort he or his staff, on his behalf, should have made to notify Mr. Goldberg.

Plaintiff's attorney asserts that he incurred a \$130 charge for the court reporter and seeks an additional \$1,000 in attorneys fees. As between Plaintiff's counsel and Defendants' counsel, the greater fault lies with Defendants' counsel, but not so great as to support a substantial award of attorneys fees. Accordingly, it is hereby

ORDERED that sanctions in the amount of \$130 are imposed against Gary C. Harris; and attorneys fees in the amount of \$300 are awarded Mary Kay Pullen. The total amount of \$430 should be paid to counsel for Mary Kay Pullen within ten days of the date of entry of this order, and a certificate of such payment filed within three days thereafter. The remainder of Plaintiff's motion for sanctions is denied.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 13 Trustee.**

IT IS SO ORDERED, this the 31<sup>st</sup> day of March, 2011.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE