

The document below is hereby signed.

Signed: August 15, 2017



S. Martin Teel, Jr.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
MARK ALAN WALL,)	Case No. 14-00411
)	(Chapter 7)
Debtor.)	
_____)	
)	
LILIAN JEAN TING,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No.
)	14-10045
MARK ALAN WALL,)	
)	Not for publication in
Defendant.)	West's Bankruptcy Reporter.

MEMORANDUM DECISION SUPPLEMENTING AND AMENDING
ORAL DECISION ISSUED AT THE TRIAL OF THIS PROCEEDING

At the trial of this proceeding, I issued an oral decision, constituting findings of fact and conclusions of law, in which I concluded that the debt owed by the defendant, Mark Alan Wall, to the plaintiff, Lillian Jean Ting, was nondischargeable under 11 U.S.C. § 523(a)(4). This memorandum decision supplements and amends that oral decision.

COMPUTATION OF THE JUDGMENT AMOUNT

As explained in the court's oral decision, Ting is entitled to recover 2% interest per annum on each of the deposits she made with Wall, accruing from the date of she made each deposit, until she demanded for the return of the deposits on December 31, 2012. That interest, as of December 31, 2012, comes to \$512.88 on the September 19, 2011 deposit of \$20,000; \$318.90 on the June 20, 2012 deposit of \$30,000; and \$367.76 on the September 20, 2012 deposit of \$65,800. Those interest amounts total \$1,199.54 as of December 31, 2012. Upon adding that \$1,199.54 of interest to the \$115,800 aggregate amount of deposits, the amount that Wall should have paid to Ting on December 31, 2012, was \$116,999.54.

For reasons explained in the oral decision, Ting is entitled to recover prejudgment interest at 6% per annum on the \$116,999.54 she should have received on December 31, 2012. Such interest, accruing from December 31, 2012, amounts to \$32,445.74 as of August 15, 2017. That brings the initial judgment amount to \$149,445.28.

The breach of fiduciary duty was willful and malicious. Wall's failure to return the deposits was a deliberate act, not arising from negligence or recklessness, and he has not shown that his breach was excusable for any reason. Accordingly, punitive damages are appropriate. As punitive damages, I will

award an amount equal to the initial judgment amount of \$149,445.28 (not the lower amount announced in the court's oral decision). That results in a total judgment of \$298,890.56.

II

The request for attorney's fees is granted, with the amount to be fixed via a later motion detailing the fees. Under the American Rule, attorney's fees are generally not recoverable. The plaintiff points to no statute or contract providing for the recovery of attorney's fees. That leaves the bad faith exception to the American Rule as the only possible basis for recovering attorney's fees. As stated in *Am. Hosp. Ass'n v. Sullivan*, 938 F.2d 216, 219-20 (D.C. Cir. 1991):

Bad faith can support an award of attorneys' fees in circumstances where the bad faith (1) occurred in connection with the litigation, or (2) was an aspect of the conduct giving rise to the lawsuit. *Nepera Chem., Inc. v. Sea-Land Serv., Inc.*, 794 F.2d 688, 701 (D.C.Cir.1986). . . .

Bad faith in conduct giving rise to the lawsuit may be found where "a party, confronted with a clear statutory or judicially-imposed duty towards another, is so recalcitrant in performing that duty that the injured party is forced to undertake otherwise unnecessary litigation to vindicate plain legal rights." *Fitzgerald v. Hampton*, 545 F.Supp. 53, 57 (D.D.C. 1982). See also *American Employers Ins. Co. v. American Sec. Bank*, 747 F.2d 1493, 1502 (D.C. Cir. 1984) ("[E]xception to the American rule . . . allows an award of attorneys' fees when the party has been the victim of unwarranted, oppressive, or vexatious conduct on the part of his opponent and has been forced to sue to enforce a plain legal right.").

Here, clear and convincing evidence establishes that Wall's misconduct in breaching his fiduciary duties, and violating clear

statutory duties regarding a real estate agent's returning funds held in escrow, was bad faith that warrants awarding attorney's fees. Before this adversary proceeding commenced, Wall asserted a claim, in bad faith, that Ting owed him more than Ting had deposited with Wall. That claim was plainly without any colorable basis and asserted in bad faith. Ting had only agreed that if she purchased a property through Wall's efforts, Wall would be entitled to share in the real estate commission due from the seller. Wall had a clear and unambiguous duty under District of Columbia statutes to return the deposited funds to Ting upon demand, and ought not have put Ting to the burden of suing to vindicate her plain statutory rights.

Moreover, Wall engaged in bad faith in this litigation. Wall's answer raised defenses that either on their face clearly lacked any colorable basis or were defenses that Ting has demonstrated, by clear and convincing evidence, lacked any colorable basis. The only reason for asserting the defenses was to achieve delay. Accordingly, Ting may recover her attorney's fees via a motion setting forth the necessary detail to determine the amount of reasonable fees that should be awarded.

III

A judgment follows in accordance with the court's oral decision of August 15, 2017, as supplemented and amended by this

