

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

JERALD R. CAREY,

DEBTOR(S)

NO. 92-40827-7

CHAPTER 7

VIRGINIA I. McCOSKREY,

PLAINTIFF(S),

v.

JERALD R. CAREY,

DEFENDANT(S)

ADV. NO. 92-7108

ORDER DENYING PLAINTIFF'S RENEWED

MOTION FOR SUMMARY JUDGMENT

This proceeding is before the Court on the plaintiff's renewed motion for summary judgment. Plaintiff Virginia I. McCoskrey appears by counsel Michael M. Tamburini and Terrance M. Summers. The defendant-debtor appears by counsel Ronald S. Weiss and Geoff W. Hetley. The Court has reviewed the relevant pleadings and is now ready to rule.

When the Court denied Ms. McCoskrey's previous summary judgment motion, it did grant her stay relief to ask a Missouri state court to confirm an arbitration award in her favor rendered by the National Association of Securities Dealers (NASD). That court has confirmed the award, and Ms. McCoskrey again asks this Court to declare the award a nondischargeable debt through the application of the principles of issue and claim preclusion. The state court's confirmation order has not changed this Court's view of the award's preclusive effects, and the Court concludes that Ms. McCoskrey's renewed motion for summary judgment must be denied.

Ms. McCoskrey's counsel apparently do not recognize the distinction between liability on and dischargeability of a debt. As a result of the confirmed arbitration decision, the debtor may not claim that he does not owe Ms. McCoskrey any money. Similarly, she may not claim he owes her more money than the amount awarded by the arbitrators. However, debtors may routinely discharge in bankruptcy debts they undoubtedly owe. The question that remains here is whether the established debt arose from actions or circumstances that render it nondischargeable under 11 U.S.C.A. §523(a)(2)(A), (4), or (6). As pointed out in the Court's prior order, Ms. McCoskrey argued before the arbitrators that the debtor could be liable to her for actual and punitive damages based on negligent or reckless conduct, as well as for intentional acts or omissions. The arbitrators did not explain why they found the debtor liable to Ms. McCoskrey. All the Court can tell is that they decided he was liable for actual and punitive damages. They did not necessarily decide that the debtor's liability was based on "false pretenses, a false representation, or actual fraud," §523(a)(2)(A), "fraud or defalcation while acting in a fiduciary capacity," §523(a)(4), or "willful and malicious injury" to Ms. McCoskrey or her property, §523(a)(6). Consequently, the parties will have to relitigate before this Court the basis of the debtor's established liability.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of September, 1995.

JAMES A. PUSATERI

CHIEF BANKRUPTCY JUDGE