

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

JK Harris & Company, LLC,
JK Harris Small Business Services, LLC

JKH Holding Co., LC,

Debtor(s).

C/A No. 11-06254-JW

C/A No. 11-06256-JW

C/A No. 11-06255-JW

Chapter 7

(Jointly Administered)

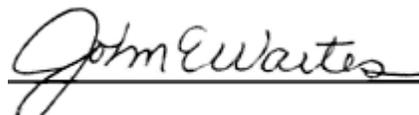
JUDGMENT

Based on the findings of fact and conclusions of law set forth in the attached Order of the Court, the Motion to Impose Sanctions filed by the Chapter 7 Trustee, Michelle L. Vieira (“Trustee”) is granted, and John K. Harris is ordered to pay sanctions to the Trustee in the amount of \$10,000.00.

**FILED BY THE COURT
08/17/2012**



Entered: 08/17/2012



Chief US Bankruptcy Judge
District of South Carolina

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ORDER

This matter is before the Court on the Motion to Impose Sanctions (“Sanctions Motion”), filed on March 12, 2012, and Supplement to the Motion to Impose Sanctions (“Supplement”), filed on May 8, 2012, by the Chapter 7 Trustee, Michelle L. Vieira (“Trustee”). By order entered on July 17, 2012, the Court addressed other issues raised by the Sanctions Motion and Supplement, including whether the use of a disclaimer in these cases was allowable and whether JK Harris & Company, LLC; JK Harris Small Business Services, LLC; and JKH Holding Co., LC (collectively, “Debtors”) should be required to file amended schedules and statements. The issue of whether John K. Harris (“Harris”) should be sanctioned for his conduct during these cases is addressed by this Order. Pursuant to Federal Rule of Civil Procedure 52, which is made applicable to this contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law:¹

¹ To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any conclusions of law constitute findings of facts, they are likewise so adopted.

FINDINGS OF FACT

1. Debtors commenced the cases by filing separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on October 7, 2011.² The petitions were signed by Harris, as Managing Member of each entity. Pursuant to a Statement Regarding Authority to Sign and File Petition, executed on October 6, 2011 by Harris and filed simultaneously with the petition in each case, Harris was “authorized and directed to appear in all bankruptcy proceedings on behalf of the [the debtor], and to otherwise do and perform all acts and deeds and to execute and deliver all necessary documents on behalf of the LLC in connection with such bankruptcy case.”

2. On October 10, 2011, initial Schedules were filed in each of Debtors’ respective cases, which were all signed by Harris as Managing Member of each entity.

3. On December 29, 2011, Debtor JK Harris & Company, LLC filed a Motion to Convert the Case to a Case under Chapter 7. Debtors JKH Holding Co., LC and JK Harris Small Business Services, LLC filed Motions to Convert the Case to a Case under Chapter 7 or, alternatively, to Dismiss the Case. At that time, Harris, acting on behalf of Debtors, ceased Debtors’ operations and closed their facilities.

4. Due to the alternative requests for relief set forth in the motions, the Court scheduled a hearing on January 10, 2012 to determine what relief, if any, was in the best interests of creditors. Following the hearing, Debtors’ cases were converted to cases under Chapter 7 by orders entered in each case on January 10, 2012 (the “Conversion Orders”), and Michelle L. Vieira was appointed as Trustee for the cases. The Conversion Orders required Debtors to take certain actions within 14 days of the entry of the orders,

² These cases are being jointly administered pursuant to an order entered in each case on October 19, 2011.

including filing amended schedules and other documents, and immediately turning over to the Chapter 7 trustee all estate property and records, immediately ceasing all business operations and taking all necessary and appropriate action to insure that estate assets are properly preserved for the Trustee, and immediately relinquishing control of their operations and estate property to the Trustee and permitting the Trustee and her agents unlimited reasonable access to estate property.

5. Debtors did not timely request an extension of time to perform and did not file the amended schedules and other documents required to be filed under the Conversion Orders. At the time of the entry of the Conversion Orders, Harris had possession of an access card to Debtors' facilities, a company laptop computer, and a company cell phone. The laptop and cell phone both contained proprietary information. Harris did not turn over the access card, laptop computer, or cell phone to the Trustee, despite being requested to do so by the Trustee on multiple occasions, until January 21, 2012.

6. Harris admitted that he deleted documents and other data from the laptop computer and cell phone prior to turning them over to the Trustee. He testified that on previous occasions, he had been instructed by a member Debtors' security staff to reset cell phones to factory settings and to delete sensitive company data contained on company laptops prior to turning them in for security purposes, and followed that practice this time "without thinking." He also admitted that he transferred data from his company laptop onto a memory stick, but stated that he left the memory stick on a table at a restaurant and it was lost. Harris asserted that all of the company information from his

laptop and cell phone that was deleted remained available on the Debtors' computer system.

7. Despite having received notice that the Meeting of Creditors in each of Debtors' cases was to be held on March 7, 2012, Harris failed to attend the Meetings. No other representative appeared on behalf of Debtors, other than Debtors' counsel, who participated telephonically. Harris testified that he was working in Boca Raton, Florida, on March 7, 2012 and offered, on the day before the Meetings, to appear by telephone. The Trustee testified that she rejected Harris's offer to appear by telephone because it was made too late and because she needed live testimony regarding Debtors' assets and operations.

8. As a result of Debtors' failure to appear at the Meeting of Creditors and failure to amend their schedules and otherwise comply with the Conversion Orders, the Trustee asserts that she incurred additional fees and expenses in the total amount of \$86,066.58.³ Therefore, she filed the Sanctions Motion as part of a Motion to Compel⁴ on March 12, 2012.

9. On April 9, 2012, the Court entered an Order granting the Trustee's Motion to Compel, which, among other things, compelled Debtors and Harris⁵ to:

³ Specifically, the Trustee asserts that she incurred costs in the total amount of \$283.61, and fees and costs in the total amount of \$79,455.39 for Trustee's counsel, Barton Law Firm, \$746.00 for the Privacy Facilitator, Jackson Cobb, \$1,581.57 for the Accountant to the Trustee, Faulkner & Thompson, and \$4,000 for the Data Recovery Specialist, Steven Abrams of Abrams Computer Forensics. The Trustee submitted Affidavits in support of these claims for fees and costs.

⁴ The complete name of the Motion filed on March 12, 2012 is "Motion to: (1) Compel Attendance at the Continued First Meeting of Creditors Scheduled for April 10, 2012; (2) Impose Sanctions for Failure to Attend the Original Meeting of Creditors Scheduled for March 7, 2012; (3) Compel the Debtors to Amend Schedules and Statements and Otherwise Comply with the Conversion Order and Bankruptcy Rule 1019(5)(A); and (4) Compel the Debtor to Provide the New Address and Contact Information for John K. Harris.

⁵ The Order designated Harris as the representative of Debtors pursuant Fed. R. Bankr. Pro. 9001(5).

- a. Immediately provide the Trustee with Harris's address and location of his residence;
- b. If Harris's residence changes at any time thereafter, notify the Court and the Trustee within five days of that change;
- c. In the event that Harris is required to be out of state for any lengthy period of time, notify the Trustee that he will be leaving the state and provide information regarding the length of time he will be out of state for any lengthy period of time, notify the Trustee that he will be leaving the state and provide information regarding the length of time he will be out of state and his whereabouts during this period of time;
- d. Appear, in person, at the Meetings of Creditors being held on April 10, 2012, and appear, in person, at any continued Meetings of Creditors or at any scheduled 2004 Examination;
- e. Cooperate with the Trustee in all respects as required by 11 U.S.C. § 521(a)(3);
- f. Immediately file the amended schedules and statement of financial affairs as required by the Conversion Orders; and
- g. Immediately provide to the Trustee the passwords for Harris's laptop and other computers used in his capacity with Debtors and identify any other property of Debtors remaining in Harris's possession.

10. On April 10, 2012, Harris appeared in person at the rescheduled Meeting of Creditors and testified on behalf of Debtors.

11. On May 8, 2012, the Trustee filed the Supplement. In the Supplement, the Trustee argued, among other things, that Harris failed to cooperate with the Trustee in the following ways:

- a. By refusing to timely turn over the laptop, cell phone and building access cards;
- b. By deleting information from the company cell phone and laptop, including at least 26,537 files since the Conversion Motions were filed;
- c. By refusing to provide information requested by the Trustee at the rescheduled Meeting of Creditors and elsewhere;
- d. By failing to attend the originally scheduled Meeting of Creditors;
- e. By assuring employees that they could continue to access the facility and work the customer files; and
- f. By refusing to file amended schedules.

12. Debtors and Harris, *pro se*, filed timely objections to the Supplement.

13. The Court conducted a hearing on the Trustee's Sanctions Motion and the Supplement on May 15, 2012. Harris appeared *pro se* and provided testimony regarding his actions in these bankruptcy cases.

CONCLUSIONS OF LAW

Section 521(a)(3) of Title 11 of the United States Code (“the Bankruptcy Code”)⁶ requires a debtor to “cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties under this Title.” Debtors are also required to surrender all property of the estate and any recorded information, including books, documents, records, and papers, to the Trustee under § 521(a)(4). Upon a debtor’s failure to comply with the provisions of the Bankruptcy Code, the Court has the power to issue orders which may be necessary or appropriate to carry out those provisions pursuant to § 105 and its inherent authority, including the power to issue orders imposing sanctions. See 11 U.S.C. § 105 (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”); Knowles Bldg. Co. v. Zinni, 261 B.R. 196, 203 (6th Cir. 2001) (stating “federal courts, including the bankruptcy court, have the inherent power to impose sanctions on a scope broader than that of Bankruptcy Rule 9011, including monetary sanctions”); In re Walters, 868 F.2d 665, 669 (finding that § 105 provides a bankruptcy court with the authority to issue civil contempt orders).

As corporations, Debtors can only speak and act through their authorized agents and representatives. Under Fed. R. Bankr. P. 9001(5), “[w]hen any act is required to be performed by a debtor or when it is necessary to compel the attendance of a debtor for examination and the debtor is not a natural person, (A) if the debtor is a corporation, ‘debtor’ includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control...” Throughout the course of these bankruptcy cases, Harris has always acted on behalf of Debtors as the self-acknowledged

⁶ Further references to the Bankruptcy Code shall be by section number only.

representative of Debtors.⁷ Furthermore, the Statement Regarding Authority to Sign and File Petition, signed by Harris and filed simultaneously with the petition in each case, authorized and directed Harris to appear in all bankruptcy proceedings on behalf of Debtors, and to otherwise do and perform all acts and deeds and to execute and deliver all necessary documents on behalf of the Debtors in connection with such bankruptcy case.

It is clear from the record in this case that Harris, acting on behalf of Debtors, failed to cooperate with the Trustee in these cases and that his failure to cooperate hindered the Trustee's performance of her duties in this case and caused the Trustee to incur additional fees and costs. Specifically, the Court finds that Harris intentionally destroyed assets of the estate through his deletion of files on the company laptop⁸ and resetting of his company cell phone, and that Harris failed to attend the Meeting of Creditors on behalf of Debtors without just cause. Harris's testimony regarding his reasons for destroying company assets and failing to cooperate with the Trustee was not credible or persuasive. Based on the foregoing, the Court concludes that Harris, as the self-acknowledged representative of Debtors, failed to comply with § 521(a)(3), § 521(a)(4), and the Conversion Order entered in this case. Accordingly, after due consideration, the Court finds that Harris should be sanctioned for his actions in these cases.⁹ It is therefore

⁷ At the request of the Trustee, Harris was designated as the representative of Debtors by order entered on April 9, 2012.

⁸ The Trustee testified that at least 26,537 files were deleted from the Harris's company laptop during the period between the entry of the Conversion Order and January 21, 2012, when Harris finally turned over the laptop to the Trustee.

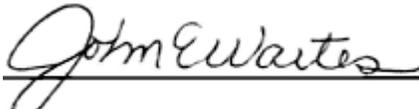
⁹ The Court notes that the Trustee recently obtained a final judgment against Harris in the amount of \$3,503,836.00 in a related adversary proceeding she filed against Harris, Adv. Pro. No. 12-80152.

ORDERED that the Trustee's Motion for Sanctions is granted, and Harris shall pay sanctions to the Trustee in the amount of \$10,000.00.¹⁰

AND IT IS SO ORDERED.

**FILED BY THE COURT
08/17/2012**




Chief US Bankruptcy Judge
District of South Carolina

Entered: 08/17/2012

¹⁰ Under the circumstances of these cases, the Court finds that the Trustee's request for sanctions in the amount of \$86,066.58 to be unwarranted. Based upon the Court's authority under § 105, the Court believes that \$10,000.00 is an adequate sanction amount under these circumstances to address Harris's improper conduct and is an appropriate amount to deter such conduct in the future. The sanctions amount does not include the fees and costs incurred by the Privacy Facilitator, the Trustee's Accountant and the data recovery expert in attending the original Meetings of Creditors, since it does not appear from the record that Harris had notice that the Trustee intended to have these individuals present at the Meeting.