

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE:**

**CIVIL ACTION**

**DOROTHY CHASE STEWART**

**NO. 08-3225**

**c/w 08-3669, 08-3852, 08-3853, 08-4805**

**[REF: 08-3225]**

**SECTION "C" 4**

**ORDER AND REASONS**

Before the Court is an Application for an Award of Fees and Costs related to appeals by Harrington & Myers (“Applicants”), counsel for appellees Dorothy Chase Stewart (“Stewart”) and Irby and Brittany Fitch (Rec. Doc. 75.) The motion is before the Court on the briefs without oral argument. Based on the memoranda by parties, the record in this case, and the applicable law, the Court denies the motion for the following reasons.

**I. LAW AND ANALYSIS**

On August 7, 2009, the Court entered a Judgment (Rec. Doc. 73) and Order and Reasons (Rec. Doc. 72) in this matter. On August 18, 2009, Applicants filed the instant application, seeking \$62,987.50 in costs and fees. (Rec. Doc. 75 at 2).

In support of their Application, Applicants cite only two authorities: 11 U.S.C. § 362(k)(1), and the Court’s decision in *Wells Fargo Bank, N.A. v. Jones*, 2009 WL 911011 (E.D.La. 2009). (Rec. Doc. 75-4 at 3). Neither authority supports their assertion that it is within the Court’s power to award attorney’s fees in this matter.

Under the American Rule, the Court has the authority to award attorney's fees "*only if* there is some 'specific and explicit' statutory exception." *Andrepoint v. Murphy Exploration and Prod. Co.*, 566 F.3d 415, 420 (5th Cir. 2009) (emphasis in original) (quoting *Holliday v. Todd Shipyards Corp.*, 654 F.2d 415, 419-20 (5th Cir.1981).

11 U.S.C. § 362(k) reads: "(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."


As these appeals involved no stay violations, the above statute is inapplicable.

In *Jones* the Court awarded fees under 11 U.S.C. § 362(k) after upholding the Bankruptcy Court's finding of a willful violation of the automatic stay. 2009 WL 911011 at \*3. Here, the Bankruptcy Court made no such finding.

Accordingly,

IT IS ORDERED that the Application for an Award of Fees and Costs (Rec. Doc. 75) is DENIED.

New Orleans, Louisiana this 11th day of January, 2010.

  
HELEN G. BERRIGAN  
UNITED STATES DISTRICT JUDGE