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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CHARLES B. EASLEY, SR., and  
PATRICIA A. EASLEY,

Appellants,

v.

COLLECTION SERVICE OF NEVADA,

Appellee.

Case No. 2:15-cv-00395-LDG

**ORDER**

Appellants, Charles B. Easley, Sr., and Patricia A. Easley, move to recover attorney's fees under 11USC §362(k) (ECF No. 23). Appellee, Collection Service of Nevada, opposes the motion (ECF No. 24). The court denies the motion for attorney's fees because *Schwartz-Tallard* prohibits a recovery from appellants.

This court has jurisdiction pursuant to 28 U.S.C. §158 (a).

Initially, the creditor, Collection Service of Nevada, violated the stay. The debtor, Easley, brought suit to correct the stay violation. The bankruptcy court awarded the debtor attorney's fees and costs incurred to enforce the stay. However, pursuant to the Ninth Circuit's ruling in *Sternberg*, the bankruptcy court did not award the debtor attorney's fees and costs incurred to pursue damages for violation of the stay. *Sternberg v. Johnson*, 595

1 F.3d 937 (9<sup>th</sup> Cir. 2010). The debtor appealed. While the appeal was pending, the Ninth  
2 Circuit ruled that a debtor could also recover fees and costs incurred to pursue damages  
3 when a creditor violates a stay. *In re Schwartz-Tallard*, 803 F.3d 1095, 1101 (9th Cir.  
4 2015). This court then affirmed the bankruptcy court's decision for fees correcting the stay  
5 violation and for damages caused by the stay violation. The Court, pursuant to *Schwartz-*  
6 *Tallard*, reversed the decision on the fees and costs in pursuing damages and remanded  
7 the case back to the bankruptcy court for further consideration. The debtor then filed this  
8 motion seeking attorney's fees and costs for appellate work.

9 Pursuant to Local Rule 7-2(d), the failure of a moving party to file points and  
10 authorities in support of the motion constitutes a consent to the denial of a motion. Here,  
11 the court cannot determine which fees appellant is seeking because the appellant did not  
12 properly segregate their fees for the relief they have received. Without appropriate  
13 apportioned fees to their corresponding appellant issue the court must deny this motion as  
14 it lacks points and authorities in support of its motion.

15 Even if the fees were apportioned correctly, the appellant could only be seeking to  
16 recover fees in two instances. The first is for appellant fees for additional damages caused  
17 by the stay violation. The appellant cannot recover their fees because they lost that issue  
18 on appeal.


19 The second is appellant fees for fees and costs incurred to pursue damages caused  
20 by the stay violation. The appellant cannot recover their fees under 11 USC §362(k).  
21 Pursuant to 11 USC §362(k), after a violation of stay the injured party shall recover actual  
22 damages, including costs and attorney's fees. The Ninth Circuit clarified that a party is  
23 entitled to an award of attorney's fees if they succeed in correcting the stay and then are  
24 successful in defending the judgment on appeal. *Schwartz-Tallard*, at 1101. Here, the  
25 debtor is prosecuting, not defending, the on appeal. Therefore, the appellant cannot  
26 recover their fees under 11USC §362(k).

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Accordingly,

THE COURT **ORDERS** that Appellant Charles B. Easley, Sr.'s Motion for Attorney's Fees is DENIED.

DATED this 29<sup>th</sup> day of June, 2017.



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Lloyd D. George  
United States District Judge