

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re	:	
PARRISH M. GALLIHER and	:	
VALERIE S. MASON,	:	
Debtors	:	Chapter 7
	:	No. 05-41368-JBR
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PARRISH M. GALLIHER and	:	
VALERIE S. MASON,	:	
Plaintiffs	:	
v.	:	A.P. No. 07-4035
INTERNAL REVENUE SERVICE	:	
Defendant	:	
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**DECISION AND ORDER ON DEFENDANT’S MOTION TO RECONSIDER**

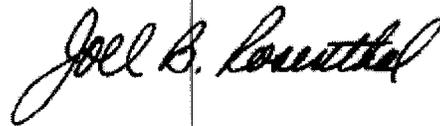
This matter having come before the Court on the Defendant’s Motion to Reconsider (Docket #28) (the “Motion”) and the Plaintiffs’ Opposition thereto (Docket #29), after due consideration of the relevant pleadings, including the Court’s Memorandum of Decision (Docket #26) and the Summary Judgment Order (Docket #27), which the Defendant seeks to have reconsidered, the Court hereby makes the following findings of fact and conclusions of law:

1. Reconsideration is appropriate;
2. The Court confirms the portion of the Order granting summary judgment in favor of the Plaintiffs with respect Count II of the Complaint, which alleged a violation of the automatic stay. It appears that a portion of the 2005 tax refund was property of the bankruptcy estate and, therefore, subject to the automatic stay in February of 2007 when the IRS offset it against the 2000 tax debt; and

3. The Plaintiffs' Complaint fails to allege an injury as a result of the violation of the automatic stay that would entitle them to damages under 11 U.S.C. § 362(k). Moreover, attorney's fees and costs with respect to that portion of the Plaintiffs' Complaint are unwarranted as the Court ordered the return of the refund in response to the Debtor's Motion to Enforce Automatic Stay on March 8, 2007. For the foregoing reasons, the Defendant's Motion is ALLOWED and the Court's Order of April 28, 2008 (Docket #27) is amended to strike the portion that reads: "There remain material factual issues to be tried under Count II concerning damages and costs asserted by the Plaintiffs."

Dated: June 4, 2008

By the Court,

A handwritten signature in black ink, reading "Joel B. Rosenthal". The signature is written in a cursive, flowing style.

Joel B. Rosenthal  
United States Bankruptcy Judge