UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 03-52087
	)	
JOHN & TABITHA KELLY,	)	CHAPTER 7
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM

ORDER [1] REQUIRING DONALD HARRIS TO TURNOVER EXCESSIVE FEES; [2] ENJOINING DONALD HARRIS FROM ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW; [3] SANCTIONING DONALD HARRIS FOR HIS "WILLFUL" VIOLATION OF THE AUTOMATIC STAY AND [4] SETTING PAYMENT AND FILING DEADLINES RELATIVE THERETO

This matter comes before the Court on the United States Trustee's "Motion to Review Fees and Services Rendered by Bankruptcy Petition Preparer" **[docket #11]** and a response to that motion filed by bankruptcy petition preparer, Donald Harris **[docket #17]**. An evidentiary hearing was held on September 17, 2003 and appearing at that hearing were Linda Battisti, trial attorney for the United States Trustee, Region 9 and Donald Harris, *pro se*. During the hearing the Court heard testimony from (1) debtor, Tabitha Kelly; (2) Annisa Delgado, one of Mr. Harris's employees; and (3) Autumn May, an individual who has used Mr. Harris's services as a bankruptcy petition preparer. The Court also received certain documents that were admitted into evidence. At the conclusion of the hearing the Court took the matter under advisement.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant

to 28 U.S.C. §157(b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b). *See also, In re Graves*, 279 B.R. 266, 270-71 (B.A.P. 9th Cir. 2002) (and cases cited therein); *In re Moore*, 283 B.R. 852, 857 (Bankr. E.D.N.C. 2002). In reaching its determinations, and whether or not specifically referenced in this Order, the Court considered the demeanor and credibility of each witness who testified. Based upon such testimony and the evidence presented at the hearing, the arguments of Ms. Battisti and Mr. Harris, the pleadings in debtors' chapter 7 case and pursuant to FED. R. BANKR. P. 7052, the Court makes the following findings of fact and conclusions of law.

BACKGROUND

John and Tabitha Kelly, *pro se*, filed a joint voluntary chapter 7 bankruptcy petition on April 24, 2003. Donald Harris signed the second page of the Kellys' bankruptcy petition as the non-attorney petition preparer who provided assistance to the Kellys. In addition to a bankruptcy petition debtors also filed a Summary of Schedules, Schedules A through J, a Statement of Financial Affairs, a Chapter 7 Individual Debtor's Statement of Intention, a Disclosure of Compensation of Bankruptcy Petition Preparer and a Verification of Creditor Matrix. Debtors did not file a legal description of their real property and a deficiency notice was sent to them from the Clerk of Court's Office on April 24, 2003 (the "Deficiency Notice"). That Deficiency Notice had a check mark next to "Legal Description of all Real Property and Land Contracts" as the additional documents required to be filed. It did not provide any information as to what would constitute such "legal description."

On the "Disclosure of Compensation of Bankruptcy Petition Preparer," Mr. Harris indicated that "[f]or document preparation services" he agreed to accept $450.00 and that "[p]rior to the filing of this statement" he had actually received $450.00 from debtors. On question 9(a) of debtors' Statement of Financial Affairs they list $450.00 as having been paid to Mr. Harris "for consultation concerning debt consolidation, relief under bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case."

On their original Schedule A - Real Property, debtors list the address of their residence (the "Real Property") as well as the current market value of and the secured claim on that property. Debtors do not indicate the nature of their interest in the Real Property or how such interest is held.[1] On May 6, 2003 debtors filed an Amended Schedule A which, in addition to the information set forth on the original Schedule A, also set forth "JTWROS" as the nature of their interest in the Real Property and "J" as how such interest was held. Attached to their Amended Schedule A was a continuation sheet purportedly setting forth the parcel number for the Real Property and a copy of a survivorship deed signed by debtors on October 26, 1995.

On their original Schedule B - Personal Property, debtors set forth, *inter alia*, that debtor-husband owns a 1997 Dodge Van worth $4,000.00 and a 1998 Olds Achieva worth $2,000.00. On their original Schedule C - Property Claimed as Exempt, debtors claim several exemptions purportedly supported by Ohio Revised Code ("ORC") §2329.66 including a

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[1] Schedule A sets forth, *inter alia*, that "[i]f the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint, or "C" for Community in the column labeled "HWJC."

$2,000.00 exemption in the Dodge Van, pursuant to ORC §2329.66(A)(2), and an $800.00 exemption in the Olds Achieva, pursuant to ORC §2329.66(A)(18). On July 21, 2003, the chapter 7 trustee administering debtors' case filed an objection to debtors' claimed exemptions in the 1997 Dodge Van and the 1998 Olds Achieva contending that the two claimed exemptions exceed statutory maximums.[2] On debtors' Schedule D - Creditors Holding Secured Claims, there is no indication that the husband's two automobiles are encumbered by any liens. Notwithstanding the apparent unencumbered nature of the vehicles, debtors set forth on the Statement of Intention that their "debt [for the automobiles] will be reaffirmed pursuant to 11 U.S.C. §524(c)."

On August 22, 2003 debtors filed Amended Schedules B and C. On their Amended Schedule B debtors revised the market value of the 1997 Dodge Van to $3,200.00 and the 1998 Olds Achieva to $1,500.00. Debtors indicated on their Amended Schedule B that these revised values were derived from an appraisal done on August 21, 2003.[3] On their Amended Schedule C debtors modified the purported values of the Dodge Van and Olds Achieva but claimed the same exemptions in those vehicles that they had claimed on their original Schedule C.[4] Each of debtors' amendments to their schedules was filed with a cover page captioned "Amendment to Petition, Schedules, Creditor Matrix and/or Statement of Affairs Pursuant to Bankruptcy Rule 1009" (the "Cover Page").

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2 Debtors did not file a response to the chapter 7 trustee's objection and a notice which was filed with the objection indicated that, if no request for a hearing is timely filed, the Court may sustain the objection without a hearing. No hearing on the matter was held and, to date, the chapter 7 trustee has not submitted a proposed order sustaining his objection to debtors' exemptions on a default basis.

3 Item 6 on the Official Instructions for completing Schedule B sets forth that the "current market value" of personal property "describes the market value *on the date the petition was filed.*" (Emphasis added). Debtors filed this chapter 7 case on April 24, 2003.

4 *See* footnote 2, *supra* and related text.

During the hearing on the U.S. Trustee's motion and Mr. Harris's response the following was established:

1. A pastor at debtors' church referred them to an entity calling itself Christian Financial for assistance with their financial difficulties. Debtors were advised by Christian Financial that filing for bankruptcy was their only option.

2. Debtors then consulted with an attorney who indicated that the charge for his/her services would be $800.00 plus filing fees. Pursuant to that consultation, debtors determined that, should they file a bankruptcy petition, it would be in their best interest to do so under chapter 7 of the Bankruptcy Code.

3. After their meeting with prospective counsel, debtors again consulted with Christian Financial which referred them to Donald Harris.

4. Debtors, who live in Wadsworth, Ohio, traveled to Sandusky, Ohio to meet with Mr. Harris.[5] Debtors brought the paperwork they had prepared for the meeting with prospective counsel to their meeting with Mr. Harris. Such paperwork did not include a copy of the bankruptcy petition or schedules.

5. Debtors never completed a blank bankruptcy petition and schedules but instead gave information to Mr. Harris either orally or through documents such as a payment statement prepared by the entity holding a mortgage on the Real Property.

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[5] It is approximately 70 driving miles from Wadsworth, Ohio to Sandusky, Ohio.

6. Debtors' meeting with Mr. Harris lasted approximately 1 ½ to 2 hours and was conducted as a "question and answer" session. During that meeting Mr. Harris inputted information derived from the answers to his questions into a computer on his desk.

7. During debtor-wife's meeting with Mr. Harris,[6] he indicated to her, several times, that he was not a licensed lawyer and could not give legal advice.

8. During their meeting, Mr. Harris gave debtor-wife a sheet setting forth certain Ohio exemption statutes, including exemptions pursuant to ORC §2329.66. [Preparer's Ex. B]. That list also includes dollar figures and percentages under columns labeled "individual" and "joint." [*Id.*]. Debtor-wife had never seen those statutory provisions prior to her meeting with Mr. Harris and the provisions set forth on that sheet and debtors' Schedule C - Property Claimed as Exempt have no meaning to her.

9. Notwithstanding that debtors set forth on their Statement of Intention that certain of their debts "will be reaffirmed pursuant to 11 U.S.C. §524(c)," debtor-wife does not know what §524(c) of the Bankruptcy Code is nor does she recall ever discussing it with Mr. Harris.

10. Debtor-wife indicated that she and her husband utilized the services of Mr. Harris because they could afford his fee of $450.00, because they were unsure of where to get all the documents needed to be filed with the Bankruptcy

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[6] Debtors brought along several of their children and, in order to tend to those children, they were often not in the room at the same time during their meeting with Mr. Harris.

Court and because they wanted to consult with someone who knew more about the bankruptcy process than they did.

11. On the day after their meeting with Mr. Harris debtors filed with the Court the bankruptcy petition and schedules prepared for them by Mr. Harris and paid the filing fees from their own funds.

12. After debtors received the Deficiency Notice from the Court they contacted Mr. Harris's office. They spoke to the woman who answered the telephone and were informed by her that they could obtain a copy of the legal description of the Real Property from Medina County.

13. Thereafter, Mr. Harris sent debtors the Cover Page and the Amended Schedule A form. When debtors received those documents the following information had already been completed: (a) on the Cover Page, the name of the chapter 7 trustee in the certificate of service; (b) on the Cover Page, the name of the judge in the caption; (c) on Amended Schedule A, "JTWROS" as the nature of debtors' interest in the Real Property; (d) on Amended Schedule A, "J" as how debtors' interest in the Real Property was held; and (e) on the continuation sheet for Amended Schedule A, the Real Property parcel number. Debtors attached the survivorship deed to the documents they received from Mr. Harris and then filed all such documents with the Court.

14. Debtor-wife has no idea of the meaning of the notations "JTWROS" and "J" that are included on debtors' Amended Schedule A.

15. Contrary to his representations in the "Disclosure of Compensation of Bankruptcy Petition Preparer" and the Statement of Financial Affairs, debtors did not pay Mr. Harris his $450.00 fee in one lump sum. Instead, they paid him $250.00 at the time of their meeting and then $200.00 approximately one month later, which would have been after debtors' bankruptcy petition was filed.

16. Mr. Harris's "Fee Clarification" sheet sets forth the following regarding amendments:

> Amendments are defined as any additions made to your bankruptcy filing once the case number has been received. Our fee for filing the amendment is $100.00. PLEASE NOTE, the Clerk or [sic] Courts also require [sic] a fee of $20.00 that is also made payable to the Clerk of Courts US Bankruptcy Court in the form of a money order. Once again, it is the client's responsibility to ensure that the money order is filled out correctly.

[Preparer's Ex. L]. No testimony was presented regarding whether or not debtors paid Mr. Harris any additional funds for amendments to their bankruptcy schedules.

17. Mr. Harris employs five other individuals at his Sandusky, Ohio office. None of those individuals sits in on meetings between Mr. Harris and prospective bankruptcy filers.

18. Mr. Harris personally prepares all the bankruptcy petitions and schedules generated by his office and the left hand margin of debtors' bankruptcy petition and schedules show that those documents were produced via an E-Z Filing, Inc. standardized computer software program.

19. Annisa Delgado is employed by Mr. Harris to handle matters concerning office administration.

20. Mr. Harris and his employees refer to the individuals who seek Mr. Harris's assistance with bankruptcy as "clients."

21. Mr. Harris charges $450.00 to all individuals who seek his services as a bankruptcy petition preparer regardless of the need for services or level of preparedness and organization of such individuals.

22. Mr. Harris admitted into evidence a list of 394 bankruptcy cases that were filed in the Northern District of Ohio in which he acted as petition preparer. [Preparer's Ex. F]. Such list covered the period from May 2001 to September 2003. It is unclear whether or not this list contains all of the individuals for whom Mr. Harris provided bankruptcy petition preparer services.

23. Ms. Delgado sometimes answers the telephone at Mr. Harris's office. Ms. Delgado often answers questions of the individuals calling such as where certain bankruptcy courts are located. Ms. Delgado also answers more substantive questions such as those dealing with the basic differences between filing under chapter 7 and chapter 13 of the Bankruptcy Code.

24. Ms. Delgado has no formal training regarding the law in general or bankruptcy in particular.

25. Mr. Harris often sends a "prospective packet" of information to individuals who call his office to inquire of his services. That packet includes, *inter alia*, a "debt listing sheet." That "debt listing sheet" does not look like Bankruptcy Schedules D, E or F.[7]

26. Autumn May found Mr. Harris through a newspaper advertisement. Prior to meeting with Mr. Harris she had met with an attorney who indicated that the charge for his/her services would be $1,000.00 plus filing fees. After meeting with Mr. Harris, it was Ms. May's understanding that she would receive the same services from him that she would from the attorney she had consulted with but that Mr. Harris would provide those services at a much lower cost.

27. As of the September 17, 2003 hearing Ms. May had not yet filed for bankruptcy.[8]

28. In Ms. May's opinion, Mr. Harris's fees for services rendered to her were "reasonable."

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7 Although Mr. Harris did not offer into evidence this "debt listing sheet," Ms. Delgado's familiarity with and testimony regarding that document support this finding.

8 Ms. May, *pro se*, did file a voluntary chapter 7 bankruptcy petition on December 4, 2003 in the Northern District of Ohio, Western Division (case no. 03-39736) and Donald Harris is listed on that petition as the non-attorney petition preparer who provided her with services.

DISCUSSION

Through his motion, the United States Trustee requests (1) that Mr. Harris be made to disgorge any excessive fees charged to these debtors and (2) that Mr. Harris be enjoined from engaging in the unauthorized practice of law. Through his response, Mr. Harris makes a general denial that he provided any legal advice to debtors and contends that, due to the circumstances of the case and the effort involved in preparing debtors' petition, his fees were not unreasonable.

A. Unauthorized Practice of Law

A "bankruptcy petition preparer" is defined by the Bankruptcy Code as "a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing." 11 U.S.C. §110(a)(1).[9] A "document for filing" is defined as "a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title." 11 U.S.C. §110(a)(2). A bankruptcy petition preparer is prohibited from engaging in the unauthorized practice of law and the services that a bankruptcy petition preparer may offer are limited to "providing forms, providing limited information such as court location and filing fees, typing documents from information provided by debtors, compiling them in proper order and providing duplication services." 11 U.S.C. §110(k); *In re Alexander*, 284 B.R. 626 (Bankr. N.D. Ohio 2002); *In re Haney,* 284 B.R. 841, 851 (Bankr. N.D. Ohio 2002). *See also In re Bush*, 275 B.R. 69, 84 (Bankr. D. Idaho 2002) (bankruptcy petition preparer can only perform modest services for

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[9] There is no dispute in this matter that Mr. Harris is a bankruptcy petition preparer as defined in the Bankruptcy Code and that he acted as such when providing services to debtors.

debtors such as transcribing or typing bankruptcy forms the debtor alone must prepare without assistance).[10]

While all federal courts have inherent power to regulate practice in cases before them, they generally look to state law to determine what constitutes the unauthorized practice of law by individuals who are not licensed attorneys.[11]

> The Ohio Constitution vests the regulation of the practice of law in Ohio exclusively in the Ohio Supreme Court. Ohio Const. art. IV, § 5. In turn, the Ohio Supreme Court has, by its own acknowledgment, defined the practice of law expansively. *Sharon Village Ltd. V.. Licking Cty. Bd. Of Revision*, 78 Ohio St.3d 479, 678 N.E.2d 932, 934 (1997). The practice of law in Ohio is not limited to the conduct of cases in court, but embraces "the preparation of pleadings and other papers incident to actions," "the management of such actions," and "in general all advice to clients and all action taken for them in matters connected with the law." . . . The Ohio Supreme Court has repeatedly applied this definition and described the actions of preparing *and* filing documents to commence actions on behalf of others as engaging in the unauthorized practice of law. *Id.*; *Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155, 724 N.E.2d 402, 404 (2000) (Ohio law prohibits a person from representing another person by commencing, conducting or defending any action in which the first person is not a party).

In re Alexander, 284 B.R. 626, 632 (Bankr. N.D. Ohio 2002).

In this case it is clear that Mr. Harris did more than simply transcribe information provided to him by debtors onto a bankruptcy petition and schedules but instead actively prepared those pleadings to commence a filing in this Court. For instance, Mr. Harris

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10 "The Bankruptcy Code recognizes the reality that *pro se* debtors often turn to non-lawyers for assistance in filing bankruptcy. Rather than prohibiting such assistance and, as a realistic matter, watching it flourish more dangerously underground, Congress chose to force it into the light by defining persons who provide such assistance and regulating their conduct." *In re Alexander*, 284 B.R. 626, 630 (Bankr. N.D. Ohio 2002).

11 During the September 17, 2003 hearing Mr. Harris represented to the Court that he is a graduate of the University of Toledo School of Law. Although he may be a law school graduate he is not an attorney admitted to practice law in the State of Ohio nor has he been admitted to practice in the U.S. District Court for the Northern District of Ohio.

provided to debtors a list of exemption statutes which may or may not be applicable to debtors' bankruptcy filing and which may or may not be wholly inclusive of all exemptions to which these debtors are entitled. Such list also includes dollar and percentage figures that individual and/or joint debtors can purportedly claim. Given that debtor-wife has no familiarity with the exemptions set forth on debtors' Schedule C, it also appears that Mr. Harris either decided upon or suggested to debtors which exemptions to list and what amount debtors should claim on their Schedule C.[12] In either situation, at least some of those exemptions appear to have been inappropriately claimed resulting in the chapter 7 trustee's filing of an objection thereto.[13] *See In re Moffett*, 263 B.R. 805, 814 (Bankr. W.D. Ky. 2001)

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12 During his cross-examination of debtor-wife and during his closing arguments Mr. Harris alluded to the fact that debtor-husband and not debtor-wife chose which exemptions to place on Schedule C. Although Mr. Harris chose not to call debtor-husband as a witness in support of such allusion, it would make no difference in this Court's findings because, even though debtors filed a joint petition pursuant to 11 U.S.C. §302, such joint filing has only procedural effect. *In re Miller*, 167 B.R. 782, 783 (Bankr. S.D.N.Y. 1994). Debtor-husband and debtor-wife remain two separate debtors each with an individual right to claim exemptions on his and her own behalf. *In re Arnold*, 33 B.R. 765, 767 (Bankr. E.D.N.Y. 1983).

13 Even if Mr. Harris merely provided debtors with a copy of purportedly available exemptions and then they directed him as to which exemptions they wanted to claim on their Schedule C, he still would have been engaged in the unauthorized practice of law:

> Clearly, . . . a bankruptcy petition preparer cannot assist the debtor in completing forms, provide legal advice that would assist a prospective debtor in making determinations as to which type of bankruptcy to file or which exemptions to take, or direct clients to particular legal publications or specific pages so that they can attempt to find legal answers on their own. The very act of directing a prospective debtor to review a particular section of a legal book in and of itself constitutes legal advice. By focusing on one answer and excluding others, the bankruptcy petition preparer steps over the line. As stated by the District Court, "Legal advice is legal advice, whether it comes directly from the petition preparer or indirectly via, for example, a bankruptcy treatise being recited by the preparer. Persons seeking legal assistance tend to place their trust in an individual purporting to have expertise in that area."

In re Bush, 275 B.R. 69, 78-79 (Bankr. D. Idaho 2002) (*citing Florida Bar v. Brumbaugh*, 355 So.2d 1186 (Fla. 1978)).

(and cases cited therein) ("advising clients about exemptions, or determining which exemptions apply to a client's property, is the unauthorized practice of law").

Additionally, Mr. Harris provided to debtors an Amended Schedule A upon which he decided to list "JTWROS" as the nature of debtors' interest in the Real Property and "J" as how debtors' interest in the Real Property was held. Although debtor-wife had no idea what the "JTWROS" notation meant, it presumably references a joint tenancy with right of survivorship which is one of many ways that individuals can own real property in the State of Ohio. *See* ORC §5302.17 - §5302.20. The manner by which debtors own the Real Property is an inherently legal determination which a bankruptcy petition preparer is not authorized to make on behalf of debtors for inclusion in pleadings.

Mr. Harris also appears to have decided to indicate on debtors' Statement of Intention that the debt for debtor-husband's automobiles would be reaffirmed pursuant to 11 U.S.C. §524(c). The concept of reaffirmation under the Bankruptcy Code is also an inherently legal determination which a bankruptcy petition preparer is not authorized to make. It is also a concept that Mr. Harris does not seem to understand as debtor-husband's ownership interest in the two automobiles does not appear to be encumbered by any debt.

In addition to the foregoing and as evidenced by Autumn May's testimony, Mr. Harris appears, through either his advertisements or his meetings with individuals interested in filing bankruptcies, to create the impression that he can provide the same services provided by an attorney but at a much lower cost. The problems created by bankruptcy petition preparers who create such an impression is one reason Congress found it necessary to enact §110 of the Bankruptcy Code. *See, e.g., Marshall v. Bourque (In re Hartmann)*, 208 B.R. 768, 776

(recognizing §110 as a "consumer protection measure to deter and provide remedies for perceived abuses and the unauthorized practice of law by an increasingly large number of non-lawyers who were advising and assisting debtors in filing bankruptcy petitions").

> Petition preparers do not compete with attorneys .... [T]hey provide none of the expertise and legal advice that attorneys offer. Petition preparers' amenability to civil damages actions analogous to malpractice actions is questionable . . . [and] their clients are unprotected by insurance or other funds. What petition preparers offer overlaps with what attorneys offer only insofar as forms are prepared for filing. If debtors perceive that petition preparers compete with attorneys, offering similar services for lower prices, two concerns about the legitimacy of that perception arise. The first, which bears directly on petition preparers and this court, is that petition preparers may not advertise or promote what they offer as anything more than the bare bones organizational assistance and document preparation services they are.

In re Moore, 232 B.R. 1, 6 (Bankr. D. Me. 1999) (*citing Consolidated Memorandum Regarding Bankruptcy Petition Preparers*, 1997 WL 615657, at *3 (Bankr. D. Me. Sept. 19, 1997)).

B. Excessive Fees

Section 110(h)(2) of the Bankruptcy Code provides that the court shall disallow any excessive fees paid to a bankruptcy petition preparer and to order the preparer to turnover such fees to the panel trustee.[14] Any failure by the petition preparer to comply with a turnover over order within 30 days will subject the preparer to further fines. 11 U.S.C. §110(h)(4). The bankruptcy petition preparer bears the burden of proving the reasonableness of any fees charged and received. *In re Alexander*, 284 B.R. 626, 634 (Bankr. N.D. Ohio 2002); *In re Bush*, 275 B.R. 69, 85 (Bankr. D. Idaho 2002).

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[14] Section 110(h)(2) also provides that debtors may exempt any funds so recovered under §522(b) of the Bankruptcy Code. Such matter is not before the Court at the present time.

A bankruptcy petition preparer may only receive compensation for services that he is legally entitled to perform: "[A]llowing compensation for services one is not legally permitted to provide would encourage violations of the law and conflict with Congress' stated goal of generally preventing fraudulent, unfair and deceptive acts by petition preparers." *In re Alexander*, 284 B.R. 626, 635 (Bankr. N.D. Ohio 2002).[15] As a bankruptcy petition preparer Mr. Harris's services are limited to: [1] providing individuals with *blank* official bankruptcy forms;[16] [2] providing individuals with *limited non-substantive* information such as the location of the courthouse and the amount of filing fees; [3] making an exact typewritten transcription of information *from previously completed official bankruptcy forms provided to him by prospective debtors* onto blank official bankruptcy forms; [4] compiling the typed official bankruptcy forms in proper order for filing and [5] providing duplication services. As noted above, Mr. Harris reported that he charged these debtors $450.00 for his services. During the hearing on this matter Mr. Harris did not present any evidence to support that such $450.00 fee was reasonable in relation to the limited services that he is legally entitled to perform.

The United States Trustee contends that "[i]n light of the majority of courts which have considered the amount of a reasonable fee for preparing a bankruptcy petition to be between $50 and $150, [Mr.] Harris should be ordered to disgorge $300 to the trustee." UST

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15 Even if compensation were somehow permitted for services that a bankruptcy petition preparer is not authorized to perform, Mr. Harris would not be entitled to compensation for any of such services in this case as he did not perform them in a competent manner.

16 Although a bankruptcy petition preparer may provide individual with blank copies of official bankruptcy forms (which are public documents), *any* direction on how to complete those forms constitutes the unauthorized practice of law. *See In re Moffett*, 263 B.R. 805, 815 (Bankr. W.D. Ky. 2001).

Motion at pg. 3. The United States Trustee does not, however, provide this Court with citations to any of the "majority of courts" referenced.

In her opinions in *In re Alexander*, 284 B.R. 626, 634-638 (Bankr. N.D. Ohio 2002) and *In re Haney*, 284 B.R. 841, 850-854 (Bankr. N.D. Ohio 2002), Judge Mary Ann Whipple addressed challenges by the United States Trustee to Donald Harris's fees as a bankruptcy petition preparer in cases filed in the U.S. Bankruptcy Court for the Northern District of Ohio, Western Division. Each of those opinions sets forth a comprehensive discussion regarding how courts have addressed the issue of the reasonableness of a bankruptcy petition preparer's fees and states, in part, the following:

> At least one court has found that "typing services" are of dubious value altogether, noting that bankruptcy forms, other than the creditor matrix, do not have to be typed at all and are readily available to debtors without charge. *In re Evans*, 153 B.R. 960, 970 (Bankr.E.D.Pa.1993). Some courts have even found petition preparers' services to be of no value, and in some instances of negative value, due to the problems they created for the debtor. *In re Paskel,* 201 B.R. 511, 518 (Bankr.E.D.Ark.1996). Some districts have established guidelines setting maximum fees for petition preparers by local court rule. *Hastings v. U.S. Trustee (In re Agyekum),* 225 B.R. 695, 699 (9th Cir. BAP 1998). Individually, courts have consistently found between $50.00 and $150.00 to be a reasonable fee for bankruptcy petition preparation. *E.g., In re Cochran,* 164 B.R. 366 (Bankr.M.D.Fla.1994) (reasonable fee $50.00, compared to $250.00 to $420.00 charged); *Evans,* 153 B.R. at 970 (maximum fee of $100.00, when $250.00 charged); *Doser,* 281 B.R. at 319 (100.00 reasonable value, where $214.00 charged); *Guttierez,* 248 B.R. at 298-99 (maximum of $50.00 permitted, where $1700.00 charged); *In re Mullikin,* 231 B.R. 750 (Bankr.W.D.Mo.1999)($150.00 allowed, where $404.00 charged); *see also In re Moran,* 256 B.R. 842, 849 (Bankr.D.N.H.2000) (maximum of $150.00 allowed without fee application, where $295.00 charged).
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> Many courts have routinely assigned an hourly rate and/or capped the number of hours reasonably spent preparing the petition. *See Hartman,* 208 B.R. at 780 (comparing preparers to secretaries and allowing $20.00 per hour); *see also In re Kassa,* 198 B.R. 790, 791-92 (Bankr.D.Ariz.1996) (allowing $16.82 per hour, with allowed fee of $201.92, compared to $500.00 charged).

> A recent decision from another bankruptcy court in the Sixth Circuit permanently enjoined a paralegal from charging more than $20.00 per hour, with a maximum total fee of $100.00, for preparing bankruptcy petitions. *In re Moffett,In re Landry,* 268 B.R. 301, 308 (Bankr.M.D.Fla.2001)(hourly rate of $75.00 adopted, consistent with billing rate for paralegals, but only up to a maximum of one and one-half hours time).

In re Alexander, 284 B.R. 626, 635 (Bankr. N.D. Ohio 2002); *In re Haney*, 284 B.R. 841, 851-52 (Bankr. N.D. Ohio 2002).

As noted above, Mr. Harris charges all of his "clients" $450.00 regardless of the need for services or level of preparedness and organization of each individual. Accordingly, it does not appear that Mr. Harris keeps track of which services he performs for which individuals (*e.g.,* typing of a petition and schedules vs. typing and photocopying a petition and schedules vs. merely providing copies of blank petition and schedules) and/or how much of his time each of those services require. Nor does it appear that Mr. Harris has in place a system to charge individuals on an hourly or per task rate. Based upon the lack of record that Mr. Harris chose to create, this Court is without sufficient information to determine exactly what permissible services he provided to these debtors and in what amount he should be compensated for such services. As Mr. Harris provided these debtors with a typewritten bankruptcy petition and schedules generated from a standardized computer software program, the Court finds that any fee charged to these debtors by Mr. Harris in excess of $100.00 is excessive.

C. Violation of the Automatic Stay

As noted above, contrary to his representations in the "Disclosure of Compensation of Bankruptcy Petition Preparer" and the Statement of Financial Affairs, debtors did not pay Mr. Harris his $450.00 fee in one lump sum. Instead, they paid him $250.00 at the time of their meeting and then $200.00 approximately one month later which was well after debtors had filed their chapter 7 bankruptcy petition. The automatic stay becomes effective at the moment a debtor's bankruptcy petition is filed and, once effective, the automatic stay applies to "all entities" and to "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. §362(a)(6). Because debtors owed $450.00 to Mr. Harris before they initiated their bankruptcy, Mr. Harris's acceptance of the $200.00 balance after the case was filed constitutes an act to collect a claim against debtors that arose before the commencement of their case. *See* 11 U.S.C. §101(5) (defining "claim") and §101(12) (defining "debt"). Accordingly, Mr. Harris violated the automatic stay when he accepted debtors' $200.00 payment for the balance owing on his fees.

Pursuant to 11 U.S.C. §362(h), when a person is injured by a "willful" violation of the automatic stay actual damages, including costs and attorney fees, may be awarded. The term "willful," while not defined in the Bankruptcy Code, has been interpreted to simply mean acting intentionally and deliberately while knowing of a pending bankruptcy. *See, e.g., Cuffee v. Atlantic Business & Community Dev. Corp. (In re Atlantic Business & Community Dev. Corp.)*, 901 F.2d 325, 329 (3rd Cir. 1990); *Knaus v. Concordia Lumber Co., Inc. (In re Knaus)*, 889 F.2d 773, 775 (8th Cir. 1989); *In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989); *C.I.T. Financial Services, Inc. v. Posta (In re Posta)*, 866 F.2d 364, 367 (10th Cir. 1989). In

addition to the award of actual damages, an award of punitive damages may also be appropriate under §362(h) of the Bankruptcy Code to deter the party at issue and others similarly situated from undertaking conduct that violates the automatic stay. *Diviney v. NationsBank of Texas (In re Diviney)*, 211 B.R. 951, 969 (Bankr. N.D. Okla. 1997). The issues of whether or not Mr. Harris's violation of the automatic stay injured debtors and should result in the award of actual and/or punitive damages pursuant to §362(h) of the Bankruptcy Code are not presently before this Court.[17]

Sanctions for a "willful" violation of the automatic stay may also be imposed pursuant to §105(a) of the Bankruptcy Code. *Spookyworld, Inc. v. Town of Berlin (In re Spookyworld, Inc.)*, 346 F.3d 1, 10 (1st Cir. 2003): *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190-01 (9th Cir. 2003); *Sosne v. Reinert & Duree, P.C. (In re Just Brakes Corp. Systems, Inc.)*, 108 F.3d 881, 885 (8th Cir. 1997); *United States v. Ruff (In re Rush-Hampton Indus., Inc.)*, 98 F.3d 614, 617 (11th Cir. 1996); *Mountain America Credit Union v. Skinner (In re Skinner)* , 917 F.2d 444, 447 (10th Cir. 1990). The purpose of issuing civil sanctions for a violation of the automatic stay pursuant 11 U.S.C. §105(a) is to promote future compliance by the violating party.

On April 24, 2003, debtors filed their bankruptcy petition and schedules on their own behalf.[18] Although it is not clear whether Mr. Harris actually knew of the April 24, 2003

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17 When Mr. Harris was paid the $200.00 balance by debtors, he may have received an avoidable transfer pursuant to §549(a) of the Bankruptcy Code. That matter is also not presently before this Court.

18 *Cf. In re Alexander*, 284 B.R. 626 (Bankr. N.D. Ohio 2002) and *In re Haney*, 284 B.R. 841 (Bankr. N.D. Ohio 2002) where Donald Harris was found to have engaged in the unauthorized practice of law when bankruptcy petitions that Mr. Harris prepared for individuals were filed on behalf of those individuals by an employee of Mr. Harris.

filing, he was aware that debtors had commenced a bankruptcy filing by at least May 6, 2003 when debtors filed their Amended Schedule A and Cover Sheet which, as noted above, were prepared for them for filing by Mr. Harris. Accordingly, when one month after their case was filed debtors paid Mr. Harris the balance due on his fees, Mr. Harris had actual knowledge of debtors' pending bankruptcy case and willfully violated the automatic stay by accepting such payment.

Mr. Harris did not provide any argument or evidence to the Court to indicate that his willful violation of the automatic stay by accepting a post-petition payment for fees is unique to this case. It is, therefore, possible that he receives fees on a post-petition basis in other cases in which he acts as a bankruptcy petition preparer. Given that the debtors he provides services to are filing their bankruptcies *pro se*, most (if not all) of those debtors are probably unaware that Mr. Harris's actions could be violating the automatic stay and that they could have recourse against him. Given that Mr. Harris holds himself out to the general public as an individual who is competent to provide services as a bankruptcy petition preparer, he is obliged to make himself fully familiar with the requirements imposed upon him by, among other provisions, §362 of the Bankruptcy Code and to strictly comply with all such requirements. Based upon the number of filed bankruptcy cases in which Mr. Harris has acted as a bankruptcy petition preparer and his "willful" violation of the automatic stay in this case, the Court finds that, pursuant to 11 U.S.C. §105(a) of the Bankruptcy Code, sanctions should be imposed upon Mr. Harris for his conduct.

D. Injunction from Engaging in the Unauthorized Practice of Law

Pursuant to §110(j)(2)(A) of the Bankruptcy Code, the Court may enjoin a bankruptcy petition preparer from engaging in any fraudulent, unfair or deceptive conduct.[19] As noted above, Mr. Harris's conduct in this case constitutes the unauthorized practice of law. The unauthorized practice of law constitutes a fraudulent, unfair or deceptive practice within the context of 11 U.S.C. §110. *See In re Doser*, 292 B.R. 652, 659 (D. Idaho 2003); *In re Bush*, 275 B.R. 69, 82 (Bankr. D. Idaho 2002); *In re Dunkle,* 272 B.R. 450, 456 (Bankr. W.D. Pa. 2002); *In re Moffett*, 263 B.R. 805, 815 (Bankr. W.D. Ky. 2001). As such, this Court will enjoin Mr. Harris from engaging in the unauthorized practice of law in the future.

CONCLUSION

Based upon the foregoing the Court finds that Mr. Harris engaged in the unauthorized practice of law, that the $450.00 fee he charged to debtors was excessive, that Mr. Harris willfully violated the automatic stay for which sanctions should issue and that Mr. Harris should be enjoined from any further unauthorized practice of law. **THEREFORE, IT IS HEREBY ORDERED:**

1. That, within 30 days of service of this Order, Donald Harris shall disgorge any fees in excess of $100.00 that he received from debtors by remitting a certified check made payable to Harold Corzin in his capacity as chapter 7 trustee.

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[19] The United States Trustee, among others, has standing to bring a civil action pursuant to §110(j) of the Bankruptcy Code.

2. That should Donald Harris fail to timely comply with the terms of the prior paragraph, the Court will impose additional sanctions upon him pursuant to 11 U.S.C. §110(h)(4).

3. That for his willful violation of the automatic stay, Mr. Harris shall also disgorge the $100.00 in fees found to not be unreasonable in this case and shall also pay to the estate of these debtors the amount of $200.00, for a total of $300.00 (the "Sanctions").

4. That Mr. Harris shall pay the Sanctions within 30 days of service of this Order by remitting a certified check made payable to Harold Corzin in his capacity as chapter 7 trustee.

5. That Mr. Harris shall file with the Court in this case (and provide a copy to the United States Trustee) a list of all cases filed in the Akron Court location in which he has acted as a bankruptcy petition preparer.

6. That upon review of the list addressed in the foregoing paragraph and as deemed appropriate by this Court, show cause hearings may be scheduled in bankruptcy cases in which Mr. Harris acted as a bankruptcy petition preparer.

7. That Donald Harris is hereby indefinitely enjoined from any further unauthorized practice of law and his services as a bankruptcy petition preparer are hereby limited as set forth in this Order.

8. That in the event that Mr. Harris fails to timely comply with any affirmative requirements of this Order, the Court reserves jurisdiction over him to consider further and other remedies, including but not limited to an injunction

under §110(j)(2)(B) prohibiting Donald Harris from acting as a bankruptcy petition preparer.

9. That nothing in this Order shall preclude debtors, the chapter 7 trustee or the United States Trustee from seeking further sanctions against Donald Harris pursuant to §110 or §362 of the Bankruptcy Code or from initiating further actions against Donald Harris pursuant to §549 (or any other applicable provision) of the Bankruptcy Code.

MARILYN SHEA-STONUM
Bankruptcy Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of DECEMBER 2003, the foregoing **ORDER [1] REQUIRING DONALD HARRIS TO TURNOVER EXCESSIVE FEES; [2] ENJOINING DONALD HARRIS FROM ENGAGING IN THE UNAUTHORIZED PRACTICE OF LAW; [3] SANCTIONING DONALD HARRIS FOR HIS "WILLFUL" VIOLATION OF THE AUTOMATIC STAY AND [4] SETTING PAYMENT AND FILING DEADLINES RELATIVE THERETO** was sent via regular U.S. Mail to:

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L. A. Napoli

Lisa Napoli, *Law Clerk*