

FILED
CL APR 21 2004
DISTRICT COURT
COLUMBUS, OHIO

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:) CASE NO. 03-56210
)
Lamont and Mico Blackmon,) CHAPTER 7
)
DEBTORS.) JUDGE MARILYN SHEA-STONUM
)
) ORDER REGARDING BANKRUPTCY
) PETITION PREPARER RECARLTON
) BUCHANAN, JR
)
)
)

On February 11, 2004 the Court held a hearing in the above-captioned case to consider several reaffirmation agreements filed with the Court. At the hearing, Lamont and Mico Blackmon (the "Debtors"), who appeared *pro se*, indicated that they had engaged Recarlton Buchanan, a bankruptcy petition preparer, to prepare and file their Chapter 7 petition. According to the representations of the Debtors at the hearing, Mr. Buchanan did more than merely type the Debtors' petition, he assisted the Debtors by preparing the schedules and determining the appropriate amounts to be listed in the schedules. The Court adjourned the hearing on February 11, 2004 to March 10, 2004 and directed Mr. Buchanan to appear at the adjourned hearing.

Mr. Buchanan appeared at the adjourned hearing. The Debtors were also present at the adjourned hearing with attorney Joseph Kernan. At the adjourned hearing Mr. Buchanan

indicated that he had accepted \$150¹ from the Debtors in exchange for preparing the Debtors' schedules, including, *inter alia*, assisting the Debtors in determining the appropriate amount of exemptions to claim.

Based on these representations, the Court finds that Mr. Buchanan, although he may have been well intentioned, engaged in the unauthorized practice of law. Federal Courts generally look to state law to determine what constitutes the unauthorized practice of law by individuals who are not licensed attorneys.

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).

Under Ohio Gov. Bar. R. VII(2)(A), the "unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice in Ohio." The practice of law is not limited to the conduct of cases in court, but includes giving legal advice and counsel. *Cincinnati Bar Assoc. v. Telford*, 85 Ohio St. 3d 111, 112 (1999)(giving legal advice

¹The Debtors' Statement of Financial Affairs indicates a \$175 payment to Mr. Buchanan in October 2003.

and counsel to defendants in collection and foreclosure proceedings in an attempt to settle those cases constitutes the practice of law); *In re Haney*, 284 B.R. 841, 848 (Bankr. N.D. Ohio 2002).

Although the unauthorized practice of law is defined by state law, bankruptcy courts have addressed specific acts that constitute unauthorized practice of law by individuals who are not licensed attorneys. Advising clients about exemptions, or determining which exemptions apply to a client's property, is the unauthorized practice of law. *In re Moffett, et al.*, 263 B.R. 805, 814 (Bankr. W.D. Ky. 2001); *In re Lyvers*, 179 B.R. 837, 840 (Bankr. W.D. Ky. 1995); *In re Gomez*, 259 B.R. at 386; *In re Gutierrez*, 248 B.R. 287, 294 (Bankr. W.D. Tex. 2000); *U.S. Trustee v. Tank (In re Stacy)*, 193 B.R. 31, 39 (Bankr. D. Or. 1996). Mr. Buchanan advised the Debtors about which exemptions to claim. This constitutes the unauthorized practice of law.

Therefore, the Court holds that pursuant to § 110(j)(2)(A) of the Bankruptcy Code, Mr. Buchanan is enjoined from holding himself out as being able to assist, in a capacity beyond what is allowed by § 110 of the Bankruptcy Code, individuals or persons seeking relief as debtors or creditors under the Bankruptcy Code for compensation unless and until he is

admitted to practice law before this Court.²

IT IS SO ORDERED.


MARILYN SHEA-STONUM
Bankruptcy Judge

² In addition, the Court directed that by not later than April 9, 2004, Mr. Buchanan submit a report to the management of Mustard Seed, a business focused on consumer credit education through which the Debtors contacted Mr. Buchanan, (1) explaining why § 110 of the Bankruptcy Code prohibits Mr. Buchanan from providing the kind of services he provided to the Debtors and (2) containing information about the resources available in Summit, Medina and Portage Counties to consumer debtors who require legal advice. Mr. Buchanan filed a copy of the report. This Court finds that the report complies with its directive.

CERTIFICATE OF SERVICE

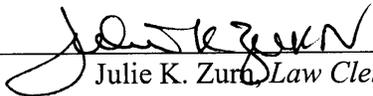
The undersigned hereby certifies that on this 21st day of April, 2004, the foregoing Order was sent via regular U.S. Mail to:

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Julie K. Zuro, Law Clerk