

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AKRON

IN RE:) CASE NO. 03-53561
)
Linda J. Liggins,) CHAPTER 13
)
DEBTOR(S)) JUDGE MARILYN SHEA-STONUM
)
) ORDER GRANTING MOTION OF US
) TRUSTEE TO REVIEW SERVICES
) RENDERED AND ANY
) COMPENSATION RECEIVED BY
) BANKRUPTCY PETITION
) PREPARER

This matter is before the Court on the Motion to Review Services Rendered and Any Compensation Received by Bankruptcy Petition Preparer (the "Review Motion") filed by the United States Trustee for Region 9 (the "US Trustee"). In the Review Motion, the US Trustee suggests that Thomas Adams ("Mr. Adams") assisted Linda Liggins (the "Debtor") with preparing her bankruptcy petition and related documents without making the necessary disclosures in violation of § 110 of title 11 of the United States Code (the "Bankruptcy Code") and in violation of this Court's prior orders (the "Injunctions"), entered on February 13, 2003 in certain unrelated Adv. Pro. Nos. 02-5219, 02-5223, and 02-5232, enjoining Mr. Adams from holding himself out as a Bankruptcy Petition Preparer (as defined in 11 U.S.C. § 110) or as being able to assist persons seeking relief under the Bankruptcy Code for compensation.

On January 21, 2004, the Court conducted a hearing (the "Hearing") on the Review Motion. Appearing at the Hearing were Linda Battisti, representing the US Trustee, and Mr. Adams, *pro se*. In the Review Motion and at the Hearing, the US Trustee requested the Court (1) find Mr. Adams to be in violation of the Injunctions; (2) review the services rendered by

Mr. Adams to the Debtor and any compensation received by him; and (3) certify the matter to the district court pursuant to Bankruptcy Code § 110(i).¹ During the Hearing, the Court heard the testimony of the Debtor and considered Exhibits A-1, A-2, A-3, B, and C which were admitted into evidence. Mr. Adams did not testify but made statements and arguments on his own behalf.

Jurisdiction

This contested matter arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It 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. Having considered the evidence presented at the Hearing, the Court makes the following findings of fact and conclusions of law.

Findings of Fact

The Debtor filed a voluntary petition for relief on July 11, 2003 (the "Petition Date"). Prior to the Petition Date, the Debtor had engaged the services of Mr. Adams for the sum of \$350 (paid in cash installments over time - with the last payment made in early July, 2003). The Debtor engaged Mr. Adams to assist her in refinancing the mortgage on her home. When those efforts proved fruitless, Mr. Adams suggested that she file a chapter 13 bankruptcy petition. In a further attempt to save her home, the Debtor, with the assistance and advice of Mr. Adams, completed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code and related schedules and Chapter 13 plan. The Debtor testified that Mr. Adams

¹ On March 1, 2004, the US Trustee withdrew its request for certification of this matter to the district court. [Docket # 30].

assisted her in completing the paperwork, including, for example, determining the amount of the exemptions to which she claimed to be entitled, and identifying secured, unsecured and priority creditors. None of the paperwork filed with the Court in this bankruptcy case discloses that Thomas Adams assisted the Debtor in the preparation of her voluntary petition, schedules and chapter 13 plan.

The Injunctions,² submitted at the Hearing as Exhibits A-1, A-2 and A-3 provide:

In accordance with 11 U.S.C. Section 110(j)(2)(A) and (B), the Defendant [Thomas Adams] is enjoined from holding himself out as a bankruptcy petition preparer. The Defendant is enjoined in any way from holding himself out as being able to assist individuals or persons in seeking relief as debtors or creditors under the Bankruptcy Code for compensation unless and until he is admitted to practice before this Court.

Conclusions of Law

Based on the evidence presented at the Hearing, the Court finds that the evidence does not support a finding that Mr. Adams was acting as a Bankruptcy Petition Preparer in this instance. A Bankruptcy Petition Preparer is defined 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) [emph. added]. The Debtor testified that she paid Mr. Adams to assist her in refinancing the mortgage on her home. Although the Court suspects that the compensation the Debtor paid to Mr. Adams may have been paid in contemplation of the need for services beyond assistance in refinancing a mortgage, the testimony, in this case, does not support a

² The Court held a hearing on an Order Setting Show Cause Hearing re: Defendant’s [Mr. Adams’] failure to Comply with December 5, 2002 Order Compelling Compliance with Discovery Requests (the “Show Cause Order”) entered in Adv. Pro. Nos. 02-5219, 02-5223, and 02-5232. The U.S. Trustee was present at the hearing on the Show Cause Order, but Mr. Adams failed to appear. As a result of Mr. Adams’ failure to comply with the discovery requests and pursuant to Fed. R. Civ. P. 37 as incorporated in Fed. R. Bankr. P. 7037, the Court deemed the facts designated in the U.S. Trustee’s amended complaint established and entered the Injunctions.

finding that Mr. Adams received compensation for preparing a document for filing.

Similarly, the testimony in this case was that the Debtor paid Mr. Adams to assist her in refinancing her mortgage. The testimony does not support a finding that Mr. Adams “held himself out as being able to assist individuals or persons in seeking relief as debtors or creditors under the Bankruptcy Code **for compensation.**” Thus, the Court cannot find Mr. Adams in violation of its Injunctions.

However, the Court finds that Mr. Adams 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 it includes giving legal advice and counsel. *Cincinnati Bar Assoc. v. Telford*, 85 Ohio St. 3d 111, 112 (1999)(giving legal advice

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). The testimony is undisputed: Mr. Adams told the Debtor how to complete her schedules and chapter 13 plan. More specifically, he provided her with the amount of the exemptions she should claim and assisted her in determining which creditor should be listed on which schedule. This Court finds that Mr. Adams gave legal advice and counsel to the Debtor. This is the unauthorized practice of law.

Sanctions for Engaging in Unauthorized Practice of Law

Mr. Adams engaged in the unauthorized practice of law when he gave legal advice and counsel to the Debtor. "A federal court has inherent authority to regulate the conduct of all who practice in it. State law is properly considered in determining whether the unauthorized practice of law has occurred in a bankruptcy court." *In re Powell*, 266 B.R. 450, 452 (Bankr. N.D. Cal. 2001) *citing In re Evans*, 153 B.R. 960, 966 (Bankr. E.D. Pa.1993); *see also Walton v. Jones (In re Shirley)*, 184 B.R. 613, 617 (Bankr. N.D. Ga.

1995)(“Ample authority exists for a bankruptcy court to hear a challenge to unauthorized practice of law in connection with a bankruptcy case”); *In re Harris*, 152 B.R. 440, 444 (Bankr. W.D. Pa.1993); *In re Bachmann*, 113 B.R. 769, 772 (Bankr. S.D. Fla.1990); *but see Sheridan v. Michaels (In re Sheridan)*, 2004 WL 603524 (1st Cir. 2004) (holding that a bankruptcy court does not have core jurisdiction over disciplinary proceedings involving attorneys who practice before the bankruptcy court). Pursuant to this Court's inherent powers, the Court finds Mr. Adams engaged in the unauthorized practice of law by assisting the Debtor in preparing her voluntary petition for relief and associated papers in this case, and is subject to sanctions for such actions. The Court does not believe that monetary sanctions will be effective in this instance.

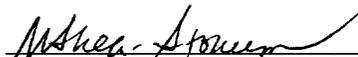
In order to determine effective and appropriate sanctions, a court may have to be creative. *See In re Seal*, 192 B.R. 442 (Bankr. W.D. Mich. 1996). This Court notes that despite its prior Injunctions and clear instructions to Mr. Adams, Mr. Adams has continued to engage in conduct which violates the spirit, if not the letter, of this Court's orders. Ms. Liggins is not the only debtor for whom Mr. Adams has provided services. The Court is aware of other cases pending before this Court in which Mr. Adams' advice has been of questionable benefit to the debtors. Mr. Adams continues to prey on those in the community who are the most vulnerable and who are desperately in need of sound financial advice. His conduct causes injury and increases the potential for injury to non-lawyer debtors and harms the integrity of the bankruptcy process. The Court views the provisions of § 110 of the Bankruptcy Code as an attempt to protect the integrity of the bankruptcy process and prevent injury to the public from this type of behavior. Unfortunately, the provisions of § 110 are not

applicable in this instance because Mr. Adams has structured his predatory activities to skirt the precise language of § 110 and this Court's prior orders. Nonetheless, this Court finds that Mr. Adams has engaged in sanctionable conduct because he continues to engage in the unauthorized practice of law. The Court believes that it must issue sanctions in this instance that will protect the public and the integrity of the bankruptcy process from further harm.

THEREFORE, the Court orders as follows:

1. Unless and until he is admitted to practice law before the United States District Court for the Northern District of Ohio, Mr. Adams is permanently enjoined from assisting, selecting or recommending any form of pleading on behalf of a debtor whose filing will be or has been with the Bankruptcy Court in that District, or giving any debtor any kind of legal advice whatsoever including, but not limited to, advice concerning exemptions; and
2. The Court admonishes Mr. Adams to continue to comply with the provisions of its prior Injunctions;
3. The Court directs Mr. Adams to provide a copy of the Notice attached to this Order and a copy of the Injunctions to each and every individual or person who seeks or inquires about his assistance on matters related to bankruptcy and thereafter to desist from providing any such assistance;
4. The Court instructs the United States Trustee to notify the Court if the United States Trustee learns that Mr. Adams is not in compliance with the provisions of this Order. Upon such notification by the United States Trustee, the Court will immediately schedule a contempt hearing regarding Mr. Adams' failure to comply at which time the Court will consider additional sanctions, including ordering Mr. Adams to post a copy of the Notice in a highly visible location inside each and every locations where he lives or does business so that all persons seeking his assistance may review the Notice.

IT IS SO ORDERED.


MARILYN SHEA-STONUM
Bankruptcy Judge

CERTIFICATE OF SERVICE

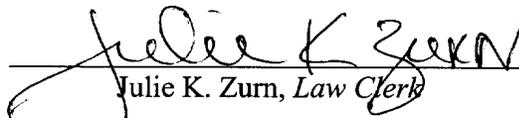
The undersigned hereby certifies that on this 15th day of June, 2004, the foregoing Order was sent via regular U.S. Mail to:

Linda Battisti
Office of the United States Trustee
BP Tower, 200 Public Square
20th Floor, Suite 3300
Cleveland, Ohio 44114-2301

Linda J. Liggins
900 Longview Avenue
Akron, Ohio 44307

Jerome L. Holub
159 S. Main Street
Akron, Ohio 44308

Thomas Adams
1677 Diagonal Road
Akron, Ohio 44320


Julie K. Zurn, Law Clerk

PLEASE TAKE NOTICE

The United States Bankruptcy Court for the Northern District of Ohio has specifically forbidden **Mr. Thomas Adams** from helping people seeking advice regarding bankruptcy filings.

He is not authorized to practice law in the Northern District of Ohio and his advice may be harmful to your financial situation.

This Notice is being provided to you as required by Order of the United States Bankruptcy Court for the Northern District of Ohio dated June __, 2004, Case No. 03-53561.

Marilyn Shea-Stonum
United States Bankruptcy Judge