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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: ) CASE NO. 04-53219  
)  
CHRISTINE A MIGA, ) CHAPTER 7  
)  
DEBTOR(S) ) JUDGE MARILYN SHEA-STONUM  
)  
) **ORDER RE: "MOTION TO**  
) **REVIEW FEES AND SERVICES ..**  
) **. AND FOR ORDER DIRECTING**  
) **DISGORGEMENT OF EXCESSIVE**  
) **FEES"**

This matter came on for hearing on October 20, 2004 on the United States Trustee's "Motion to Review Fees and Services Rendered by [William John Stottler ("Stottler") and J. Stottler & Associates, Inc. ("the Stottler Organization")] and for Order Directing Disgorgement of Excessive Fees" [docket #14]. Appearing at the hearing were Linda Battisti, trial attorney for the Office of the United States Trustee and Harold Corzin the chapter 7 trustee administering this case. William John Stottler filed a response to the United States Trustee's motion [docket #18] but did not appear for the October 20<sup>th</sup> hearing.

Also present for the hearing was Felix O. Jackson. At the beginning of the hearing Mr. Jackson indicated that he is an associate of Mr. Stottler and that he was appearing at the hearing on Mr. Stottler's behalf. Because Mr. Jackson is not an attorney, the Court informed him that he could not represent either Stottler or the Stottler Organization.

During the hearing the Court received evidence in the form of exhibits and in the form of testimony from debtor, Christine Miga. The Court also heard testimony from Mr. Jackson. Based upon the file in this case and the Court's records, the United States Trustee's motion and Mr. Stottler's response thereto, the testimony and evidence adduced at the hearing and the arguments of Ms. Battisti and Mr. Corzin, the Court makes the following findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 9014 and FED. R. BANKR. P. 7052.

## FINDINGS OF FACT

1. Debtor filed a chapter 7 bankruptcy petition, *pro se*, on June 10, 2004.
2. Debtor's primary place of residence is 4480 Rock Cut Road, Norton, Ohio 44203 (the "Residence"). The first mortgage holder on the Residence is Bankers Trust Company of California, NA, as custodian or trustee c/o Chase Manhattan Mortgage as Servicing Agent ("Chase").
3. In May of 2004 a foreclosure action was pending against the Residence.
4. In May of 2004 debtor received a letter on the Stottler Organization letterhead which was addressed to debtor's ex-husband, sent via the United States Post Office, signed by John Stottler as President of the Stottler Organization and which set forth, in pertinent part, the following:

According to the county records, your house is in **Foreclosure** and scheduled to be sold at the Sheriff sale on: [\_\_\_\_], 2004[.]

**If you are interested in saving your home, take the first step and call us!**

Foreclosure is a very complex business, and it is important that ***YOU KNOW THE PEOPLE YOU ARE DEALING WITH*** and that you ***KNOW ALL OF YOUR OPTIONS*** before you send any money or sign any contracts!

That's why, at this point, you need a firm of experienced professionals who know how to prevent the sale of you [sic] home. When you elect our firm to represent your interest, **not only can the sale of your home be PREVENTED**, but we will attempt to negotiate **a mortgage plan that you can afford**.

Before you sign any agreements, call us **TOLL FREE at 1-888-850-0880**, to discuss your situation. The call is free, and the phone consultation is free.

We look forward to assisting you through this difficult time.

**NOTE: Bankruptcy Services are available though [sic] our outside resources, if, as a last resort, this is the only solution.**

UST Hearing Ex. 1. [This correspondence will hereinafter be referred to as the "Stottler Solicitation Letter"].

5. After receiving the Stottler Solicitation Letter debtor called the toll free number listed therein in an effort to save the Residence from foreclosure. Thereafter debtor met with Stottler at least twice at his office in Fairlawn, Ohio.
6. During one of her meetings with Stottler, debtor paid him \$600.00 via cashiers check.
7. Based on her initial meeting with Stottler, debtor understood that, in return for the \$600.00 payment, Stottler would contact Chase and attempt to negotiate an "affirmation" of the Residence. Debtor told Stottler during that meeting that she could not afford to file a bankruptcy under chapter 13 of the Bankruptcy Code.
8. Debtor has filed at least four prior chapter 13 cases: (1) Case Number 99-50417, filed on February 19, 1999; (2) Case Number 01-51983, filed on May 22, 2001; (3) Case Number 02-55773, filed on December 12, 2002 and (4) Case Number 03-54320 filed on August 21, 2003. All of these chapter 13 cases were filed with the assistance of counsel, and all were dismissed on a motion filed by the chapter 13 trustee.
9. During one of her meetings with Stottler, he told debtor that she should seek relief under chapter 7 of the Bankruptcy Code. During that meeting Stottler introduced debtor to Felix O. Jackson. Notwithstanding the fact that debtor had never met Mr. Jackson before, never gave Stottler or Mr. Jackson a copy of her pay stubs and never requested that a bankruptcy petition be prepared on her behalf, Mr. Jackson presented debtor with an almost complete typewritten chapter 7 bankruptcy petition which he had prepared.
10. Although Mr. Jackson had prepared the bankruptcy petition, his name and signature do not appear anywhere on that document.
11. Debtor supplemented the petition prepared by Mr. Jackson with some handwritten information on Schedule I - Current Income of Individual Debtor(s) and page 1 of the Statement of Financial Affairs. Debtor then signed the petition and filed it with this Court. Debtor paid all the filing fees associated with the chapter 7 filing.
12. On her Schedule A - Real Property, the Residence is listed as having a current market value of \$102,510.00. Also listed is a secured claim in the amount of \$75,000.00. During the hearing debtor testified that the information on Schedule A was accurate.
13. On July 13, 2004 Chase filed a motion seeking relief from the automatic stay to pursue its state law rights relative to the Residence [docket #6]. In that motion Chase indicates that it is owed \$114, 375.80 on account of its loan to debtor.

14. Debtor filed a response to Chase's motion for relief from the automatic stay [docket #10] indicating that she has "every intention on reaffirming [] mortgage payments" but she did not in any way challenge the amount that Chase claims it was owed. Debtor's petition does not include a Statement of Intention and a Statement of Intention has never been filed in this case. There is also nothing in the record to indicate that Stottler or the Stottler Organization ever contacted Chase regarding the Residence.
15. Chase's motion for relief from the automatic stay was granted after a hearing on the matter.
16. On her Schedule C - Property Claimed as Exempt, debtor sets forth several exemptions purportedly supported by specifically referenced provisions of the Ohio Revised Code. Debtor testified that she had never seen those statutory provisions prior to her meeting with Mr. Jackson and that she is not familiar with the term exemption. During the hearing Mr. Jackson testified that he explained to debtor her exemption rights pursuant to the Ohio Revised Code and that he provided debtor with the Ohio Revised Code exemption provisions that were listed in her petition.
17. In his response to the United States Trustee's motion, Stottler sets forth, in part, the following:

Christine Miga told Mr. Jackson that she had a large tract of ground that was her property, and that she was dividing into lots. She further stated she would sell the lots and receive more than enough to pay-off her debts, and to have a totally paid off home for herself. She also stated she required time to accomplish the sale of the lots. Mr. Jackson agreed to help her prepare papers to file a Chapter 7 bankruptcy to give Christine time to sell her lots.

During the hearing, debtor indicated that this representation regarding subdivision of property was not accurate.

18. Mr. Jackson testified that he has known Stottler for several years and that he is currently an employee of the Stottler Organization. As an employee of the Stottler Organization Mr. Jackson receives compensation in the amount of \$150.00 per prepared bankruptcy petition. Mr. Jackson prepared debtor's chapter 7 bankruptcy petition at the request of Stottler and received \$150.00 to do so from the \$600.00 paid by debtor to Stottler.

## CONCLUSIONS OF LAW

1. In preparing debtor's bankruptcy petition for filing Felix Jackson was acting as a bankruptcy petition preparer pursuant to §110(a) of the Bankruptcy Code.
2. Based upon the employer-employee relationship between Felix Jackson and the Stottler Organization and the fact that debtor's bankruptcy petition was prepared at the express direction of Stottler, the Court finds that Mr. Jackson was acting as the agent of both Stottler and the Stottler Organization when he performed bankruptcy petition preparer services for debtor. *Master Consolidated Corp. V. BancOhio Nat'l Bank*, 575 N.E.2d 817, 822 (Ohio 1991). Given such agency relationship, his actions as bankruptcy petition preparer are imputed upon Stottler and the Stottler Organization.
3. "A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address." 11 U.S.C. §110(b)(1). Stottler and the Stottler Organization, through Mr. Jackson, failed to comply with this requirement of the Bankruptcy Code for which the Court may impose of fine of up to \$500.00. 11 U.S.C. §110(b)(2). The Court finds that, in this instance, a fine is warranted.
4. "A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document." 11 U.S.C. §110(c)(1). Stottler and the Stottler Organization, through Mr. Jackson, failed to comply with this requirement of the Bankruptcy Code for which the Court may impose a fine of up to \$500.00. 11 U.S.C. §110(c)(2). The Court finds that, in this instance, a fine is warranted.
5. 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. 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).
6. A bankruptcy petition preparer may only receive compensation for services that he is legally entitled to perform. *In re Alexander*, 284 B.R. 626, 635 (Bankr. N.D. Ohio 2002). A bankruptcy petition preparer's services are limited to: [1] providing individuals with *blank* official bankruptcy forms; [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.

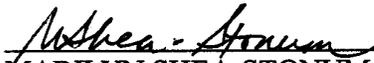
7. The evidence adduced at the hearing indicates that debtor paid Stottler and/or the Stottler Organization \$600.00 for services related to negotiations with Chase and her bankruptcy filing. The services that Mr. Jackson provided to debtor do not fall within any of the allowable services that a bankruptcy petition preparer may perform. Moreover, Stottler and the Stottler Organization failed to present any evidence to demonstrate that the \$600.00 payment was reasonable in relation to the services provided by Stottler, the Stottler Organization or Mr. Jackson. The Court finds the \$600.00 fee paid by debtor to be unreasonable and excessive given that none of the limited services permitted to be performed by a bankruptcy petition preparer were actually performed in this case. *Cf. In re Alexander*, 284 B.R. 626 (Bankr. N.D. Ohio 2002); *In re Haney*, 284 B.R. 841 (Bankr. N.D. Ohio 2002).
9. The Court finds that Stottler and the Stottler Organization have, through the mailing of the Stottler Solicitation Letter, affirmatively misrepresented services that Stottler, the Stottler Organization and employees of the Stottler Organization can legally provide individuals under Bankruptcy Law and the laws of the State of Ohio and that Stottler and the Stottler Organization should be enjoined from further engaging in such conduct pursuant to §110(j)(2)(A) of the Bankruptcy Code.

### CONCLUSION

Base upon the foregoing, the Court **HEREBY ORDERS** the following:

1. That Stottler and the Stottler Organization be fined in the amount of \$1,000.00 (the "Fine").
2. That **by not later than November 10, 2004** the Fine shall be remitted via certified check delivered to Harold Corzin, Corzin, Sanislo, Ufholz & Freedman, Commonwealth Square, 304 N. Cleveland-Massillon Road, Akron OH 44333.
3. That Stottler and the Stottler Organization disgorge the \$600.00 paid by debtor (the "Disgorged Funds").
4. That **by not later than November 10 2004** the Disgorged Funds shall be remitted via certified check delivered to Harold Corzin, Corzin, Sanislo, Ufholz & Freedman, Commonwealth Square, 304 N. Cleveland-Massillon Road, Akron OH 44333.
5. That Stottler and anyone acting in concert with him and the Stottler Organization and anyone acting in concert with it shall cease any and all distribution of the Stottler Solicitation Letter to individuals who reside in Summit, Medina and Portage counties.

6. That Stottler and anyone acting in concert with him; the Stottler Organization and anyone acting in concert with it; and Felix Jackson and anyone acting in concert with him, shall cease any and all correspondence that offers services of the general nature referenced in the Stottler Solicitation Letter with individuals who reside in Summit, Medina and Portage counties and who are debtors in a pending foreclosure action.
7. That the failure by Stottler and/or the Stottler Organization and/or Felix Jackson to comply with the prohibitions in paragraphs 5 and 6 of this Order will result in the imposition of severe sanctions.
8. That **by not later than November 10, 2004** Stottler and the Stottler Organization shall provide to the United States Trustee a list of the names and addresses of all debtors with cases pending in the U.S. Bankruptcy Court for the Northern District of Ohio that Stottler and/or employees of the Stottler Organization have met with either by telephone or in person.
9. That nothing in this Order shall preclude the United States Trustee from bringing an action against Felix O. Jackson for a failure to abide by §110 of the Bankruptcy Code and any other action the United State Trustee deems appropriate under the circumstances.

  
MARILYN SHEA-STONUM  
Bankruptcy Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 2<sup>nd</sup> day of NOVEMBER 2004, the foregoing Order was sent via regular U.S. Mail to:

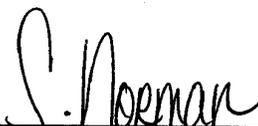
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**FELIX JACKSON**  
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\_\_\_\_\_  
Deputy Clerk