

IT IS SO ORDERED.

Dated: 03:09 PM September 25 2007

  
MARILYN SHEA-STONUM *JS*  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:	)	
	)	
CYNTHIA AND JEFFREY HANZEL,	)	CASE NO. 06-52310
	)	
DEBTOR(S)	)	CHAPTER 7
	)	
	)	
	)	
	)	JUDGE MARILYN SHEA-STONUM
	)	
	)	<b>ORDER RE: US TRUSTEE'S MOTION</b>
	)	<b>TO REVIEW FEES, TO IMPOSE</b>
	)	<b>FINES AND TO ASSESS DAMAGES</b>
	)	
	)	
	)	

This matter is before the Court on the Motion of the United States Trustee (the "UST") to Review Fees, Impose Fines and Assess Damages [docket # 29] (the "Motion"). A hearing was held on the Motion on June 8, 2007.<sup>1</sup> Appearing at the hearing were Dean Wyman, trial attorney for the UST, Cynthia Hanzel and Tony Kloak (aka Tony Klock, Robert

---

<sup>1</sup> The Court initially set the matter for hearing to be held on June 6, 2007. On May 9, 2007, the Court issued a notice rescheduling the hearing for June 8, 2007.

Anthony Klook, Robert A. Klook and Walter C. Fadrowski), *pro se*. No one appeared at the hearing on behalf of Associated Real Estate Counseling, Mattie Williams or Ruby L. Hollins.<sup>2</sup> During the hearing, the Court heard the testimony of Cynthia Hanzel and Tony Kloak. In reaching its decision, the Court considered the demeanor and credibility of the testifying witnesses. Based upon the testimony, the arguments of counsel, the pleadings in this case<sup>3</sup> and pursuant to Fed. R. Bankr. P. 9014(e) and 7052, the Court finds as follows:

1. On October 16, 2005, Cynthia and Jeffrey Hanzel (the “Debtors”) filed a chapter 13 bankruptcy petition with the assistance of counsel, Christopher Manos, initiating case no. 05-81080. The Debtors’ Chapter 13 Plan was confirmed by order of the Court on March 24, 2006.
2. On November 2, 2006, the Debtors, *pro se*, filed a chapter 7 bankruptcy

---

<sup>2</sup> On June 5, 2007, Barbara Brown-Daniels filed a “Notice of Hearing Objection to the Trustee Motion to Review Fees and Motion to Continue.” (Docket ## 40 and 41). In this “Notice” Ms. Brown-Daniels purports to reschedule the hearing for June 6, 2007 at 11:30. The Court does not allow attorneys to self schedule hearings on matters other than motions for relief from stay. On June 6, 2007, Barbara Brown-Daniels filed a document styled “Objection to Motion to Review Fees, To Impose Fines and To Assess Damages and Motion to Continue Hearing” (Docket # 42). On the same date, Ms. Brown-Daniels filed a document styled “Notice of Hearing Objection to the Trustee Motion to Review Fees and Motion to Continue.” (Docket # 43). Again the “Notice” purported to reschedule the hearing for 11:30 a.m. on June 6, 2007.

Ms. Brown-Daniels did not appear before the Court on June 6, 2007 or June 8, 2007. At the hearing on June 8, 2007, the Court treated the filings by Ms. Brown-Daniels as a motion for continuance. The Court denied her motion for continuance.

<sup>3</sup> After the hearing concluded and the Court took the matter under advisement, on July 8, 2007, Ms. Brown-Daniels filed docket ## 46, 47, 48 and 49. Docket # 46 is styled as a “Motion to Dismiss Proceeding Against ARCC, B. Brown-Daniels and Ruby Hollins” (the “Brown-Daniels Motion”) and seeks the dismissal of “the proceedings against the above defendants due to the tainting caused by the improper presentation of the deposition testimony.” Docket ## 48 and 49 appear to be duplicate filings. On July 11, 2007, the UST filed an objection to the Brown-Daniels Motion arguing that the hearing on the UST Motion was held and concluded and the matter was under advisement. Therefore, the Brown-Daniels Motion is untimely. In addition, the UST argues that the Brown-Daniels Motion is irrelevant. The Court agrees. Thus, the Brown-Daniels Motion is denied.

petition initiating case no. 06-52310. The Debtors completed a form of disclosure at the time of filing disclosing Ruby Hollins provided assistance to them in preparation of the bankruptcy petition and schedules. The Debtors indicated that they paid Ruby Hollins \$125 for her services. In addition, the initial filing included a “Disclosure of Compensation of Bankruptcy Petition Preparer” completed by Ruby Hollins which said Ruby Hollins accepted \$125.00.

3. The Debtors’ initial chapter 7 filing did not include their schedules or statement of financial affairs. In addition, the Debtors failed to file certain other documents required by law. Therefore, the Court set a hearing and directed the Debtors to appear and show cause why their case should not be dismissed.
4. The Debtors appeared at the show cause hearing on December 13, 2006. During the hearing the Debtors stated that prior to filing their Chapter 7 case, they received a letter from “Foreclosure Incorporated”<sup>4</sup> in Ravenna. The Debtors paid \$249 to Foreclosure Incorporated and, in turn, Foreclosure, Incorporated referred the Debtors to Ruby Hollins. According to the Debtors, they paid Ruby Hollins \$125 for her assistance and she had advised the Debtors that they could withdraw their chapter 13 and file a chapter 7 case.
5. Subsequent to the December 13, 2006 hearing, the Court entered an Order directing the Debtors and Ruby Hollins to appear on February 22, 2007 and show cause why Ruby Hollins should not be ordered to disgorge fees and enjoined from offering petition preparer services to anyone residing in Summit, Medina and Portage Counties.
6. Ruby Hollins did not appear at the February 22, 2006 hearing. At the February 22, 2007 hearing, Cynthia Hanzel testified that Howard from Foreclosure Incorporated referred her to Mattie Williams. She phoned Mattie Williams and provided information for use in preparing her bankruptcy petition. Cynthia Hanzel further testified that she went to Mattie Williams’ place of business and signed the paperwork. Prior to the February 22,

---

<sup>4</sup> Based on subsequent testimony of the Debtors and the Exhibits admitted on June 8, 2007, the Court finds that the Debtors’ references to “Foreclosure Incorporated” are actually to Foreclosure Recyclers, Inc., the company owned and operated by Tony Kloak. References in this opinion to “Foreclosure Incorporated” or “Foreclosure Recyclers” are to Foreclosure Recyclers, Inc., the company owned and operated by Tony Kloak.

2007 hearing, the Court had entered an Order in an unrelated case, Case No. 06-52470, on January 24, 2007 enjoining Ruby Hollins and anyone working in concert with her from offering bankruptcy petition preparer services to anyone residing in Summit, Medina and Portage counties. The Court did not enter a separate order in the above-captioned case with respect to the activities of Ruby Hollins.

7. On April 23, 2007, the UST filed the Motion seeking a review of fees, imposition of fines and sanctions against Foreclosure Recyclers, Inc., Tony Kloak, Associated Real Estate Counseling, Inc., Mattie Williams and Ruby L. Hollins.
8. At the hearing on June 8, 2007, Cynthia Hanzel testified that she and her husband were facing foreclosure proceedings in the fall of 2006. The Debtors received a postcard from Foreclosure Recyclers, Inc. in the mail. *See* Exhibits 7 and 8. The postcard says "We can still stop the sheriff's sale to allow you ... to sell your house and buy it back on a lease option for less than you owe... Help you get your credit repaired in as little as 6 months ... Our only fee to save you from the sheriff is \$245.00." *See* Exhibit 8.
9. Ms. Hanzel called the number on the postcard and left a voicemail. Howard Taylor returned her call.
10. Howard Taylor came to the Debtors' home on November 2, 2006. The Debtors paid \$245 to Howard Taylor for a "consultation fee." *See* Exhibit 2. Mr. Taylor told the Debtors they could convert their chapter 13 to a chapter 7 and that Foreclosure Recyclers, Inc. could help them. He directed the Debtors to contact Mattie Williams at Associated Real Estate Counseling and provided the Debtors with a list of information they would need to provide to Mattie Williams at Associated Real Estate Counseling, including a handwritten fee schedule for these service. *See* UST Exhibits 3 & 4.
11. The Debtors contacted Associated Real Estate Counseling and met with Mattie Williams on November 2, 2006. The Debtors paid Ms. Williams \$150.00 for a "Family Business Plan," \$150.00 for "Credit Counseling" and \$125.00 for petition preparation. *See* Exhibits 1 & 2. Ms. Williams did not provide Credit Counseling to the Debtors.
12. Foreclosure Recyclers, Inc. and Associated Real Estate Counseling received a combined total of \$670 from the Debtors.
13. Tony Kloak testified that Foreclosure Recyclers, Inc. through Howard Taylor

referred the Debtors to Associated Real Estate Counseling. Mr. Kloak admitted referring many cases to Associated Real Estate Counseling for the purposes of preparing a bankruptcy filing.

### *DISCUSSION*

In the Motion, the UST asks the Court to find that each of the following have violated General Order No. 05-3, Bankruptcy Code § 110, engaged in unfair and deceptive practices, and committed acts that constitute civil contempt of this Court: Foreclosure Recyclers, Tony Kloak, Associated Real Estate Counseling, Mattie Williams and Ruby Hollins.

#### **Failure to Disclose Fees in Excess of Maximum Allowable Fee**

A “bankruptcy petition preparer” means a person who prepares for compensation a document for filing by a debtor. *See* 11.U.S.C. § 110(a). Based on the Debtor’s testimony, the Court finds that Mattie Williams, as an agent of Associated Real Estate Counseling, prepared the Debtors’ documents for filing in concert with Foreclosure Recyclers, Inc. *See In re McGill*, 2007 WL 1119939, \*5 (Bankr. E.D. Tenn.) (finding that a “foreclosure mitigation and prevention company” that habitually referred people to a petition preparer was working in concert with the petition preparer and was a bankruptcy petition preparer as defined by § 110).

A bankruptcy petition preparer is required to file with the petition a declaration under penalty of perjury disclosing any fee received from or on behalf of a debtor within the twelve months immediately prior to the filing of the case. 11 U.S.C. § 110(h)(2). This subsection requires the disclosure of *all* fees received, including fees for services other than the typing of the petition and schedules. *See In re Moran*, 256 B.R. 842, 852 (Bankr. D. N.H. 2000);

*In re Kaitangian*, 218 B.R. 102, 114 (Bankr. S.D. Cal. 1998). The disclosure of compensation filed in this case disclosed a fee in the amount of \$125. However, based on the evidence presented at the hearings in this matter, the Court finds that the Debtors paid no less than \$670. This is a violation of §110(h).

Pursuant to § 110(h)(3)(B), all fees charged may be forfeited in any case where the bankruptcy petition preparer failed to make a complete disclosure of any fee received from or on behalf of a debtor. The disclosure of compensation in this case did not disclose the full amount of the fee received. Therefore, the Court orders all fees forfeited.

In addition, § 110(h)(3)(A) provides that the court shall disallow and order the immediate turnover to the bankruptcy trustee of any excessive fees paid to a bankruptcy petition preparer. In this District, General Order 05-3 establishes \$125 as the presumptive maximum allowable fee. The fees paid in this case exceed the presumptive maximum allowable fee. Foreclosure Recyclers, Inc. and Associated Real Estate Counseling failed to present any evidence to the Court to overcome the presumption. *See In re Alexander*, 284 B.R. 626, 634 (Bankr. N.D. Ohio 2002)(proving the reasonableness of any fees charged and received is the burden of the bankruptcy petition preparer); *In re Bush*, 275 B.R. 69, 85 (Bankr. D. Idaho 2002). Therefore, the Court disallows the fees paid to Foreclosure Recyclers, Inc. and Associated Real Estate Counseling.

Foreclosure Recyclers, Inc. shall turnover all fees paid by the Hanzels to the Hanzels. Associated Real Estate Counseling shall turnover all the fees paid by the Hanzels to the Hanzels. Any failure to comply with this order within 30 days will subject Foreclosure

Recyclers, Inc. and Associated Real Estate Counseling to further fines. 11 U.S.C. § 110(h)(5).

### **Failure to List Identifying Numbers**

Pursuant to § 110(c)(1) and (2)(A) the social security numbers of “each individual who prepared the document or assisted in its preparation” shall be placed on the document. Only Ruby Hollins’ social security number is listed on the documents filed with the Court. Based on the evidence presented, the Court finds that there were additional individuals and entities that assisted in the preparation of the documents filed, for instance, Mattie Williams, Associated Real Estate Counseling and Foreclosure Recyclers. None of the individuals or entities involved, other than Ruby Hollins, is listed on the documents filed with the Court. This is a violation of § 110(c).

### **Unfair and Deceptive Practices**

The UST argues, but cites no law in support, that Foreclosure Recyclers, Tony Kloak, Associated Real Estate Counseling, Mattie Williams and Ruby Hollins engaged in fraudulent, unfair and deceptive practices. An "unfair" or "deceptive act" is not specifically defined in the Bankruptcy Code. "Deceit" is defined as "the act of intentionally giving a false impression." Black's Law Dictionary 435 (8th ed. 2004). The Court finds that Foreclosure Recyclers and Associated Real Estate Counseling were working in concert together to give individuals the false impression that through bankruptcy with the help of Foreclosure Recyclers and Associated Real Estate Counseling their homes could be saved from sheriff sale and their financial posture improved.

## **Sanctions for Violation of § 110**

Section 110 provides,

(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure.

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer -

...

(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer

The Court finds that Foreclosure Recyclers, Inc., Tony Kloak, Associated Real Estate Counseling, Mattie Williams and Ruby Hollins failed to comply with subsections (c) and (h) of section 110.<sup>5</sup> Therefore the Court fines Associated Real Estate Counseling, Mattie Williams and Ruby Hollins \$1,000 (\$500 for each such failure). In addition, pursuant to § 110 (l)(2)(D), the Court triples the fine due to the failure to disclose. Associated Real Estate Counseling, Mattie Williams, Ruby Hollins, Tony Kloak and Foreclosure Recyclers, Inc. are jointly and severally responsible for paying \$3,000 in fines to the UST pursuant to § 110(l)(4)(A).

---

<sup>5</sup> The Court believes that the bankruptcy petition preparers in this case also violated §§ 110(e)(2)(A) and (B)(i)(II) and (III) and (B)(vii) by advising the Debtors that they could convert their pending case or file a new case while the old case remained pending and by advising the Debtors that their actions would help them save their home. Notwithstanding this belief, because the UST did not raise these violations, the Court will not consider them further.



Section 110 also provides, in pertinent part,

(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor--

(A) the debtor's actual damages;

(B) the greater of--

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.

Pursuant to § 110(i), if a petition preparer violates § 110, the Court shall order the petition preparer to pay to the debtors (A) the debtor's actual damages, (B) the greater of \$2,000 or twice the amount paid by the debtors and (C) reasonable attorneys' fees. Foreclosure Recyclers, Inc., Tony Kloak, Ruby Hollins, Mattie Willaims and Associated Real Estate Counseling violated § 110. Therefore, the Court orders that Foreclosure Recyclers, Inc., Tony Kloak, Ruby Hollins, Mattie Williams and Associated Real Estate Counseling, jointly and severally, are to pay to the Debtors the amounts as follows:

*Actual Damages*

Because no proof was presented with respect to Debtors' actual damages, the Court does not award any actual damages.

*\$2,000 or Twice the Amount Paid*

Subsection 110(i)(1)(B) allows an award of the greater of \$2000 or twice the amount paid by the debtors. In this instance, \$2,000 is greater. Therefore, pursuant to § 110(i), the Court orders Foreclosure Recyclers, Inc., Tony Kloak, Ruby Hollins, Mattie Williams and Associated Real Estate Counseling to pay \$2,000 to the Debtors.

*Reasonable Attorneys' Fees*

Because the motion was filed by the UST and not the Debtor, Subsection 110(i)(2) allows the Court to order the payment to the UST, as movant, \$1,000 plus reasonable attorneys' fees and costs incurred. No evidence was presented with respect to attorneys' fees and costs. Therefore, the Court orders Foreclosure Recyclers, Inc., Tony Kloak, Ruby Hollins, Mattie Williams and Associated Real Estate Counseling to pay \$1,000 to the UST.

In addition, § 110(j) provides that the UST may bring a civil action against a bankruptcy petition preparer to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of section 110 or from further acting as a bankruptcy petition preparer. The Court has already issued orders enjoining Ruby Hollins and those acting in concert with her. In addition, Tony Kloak, by consent entry dated November 1, 2004 in Adv. Pro. 07-5061,<sup>6</sup> is enjoined from engaging in activity that violates section § 110. The failure to comply with the consent entry in Adv. Pro. 07-5061 is the subject of on-going litigation in that

---

<sup>6</sup> Adversary Proceeding 07-5061 was commenced on September 7, 2004 by the filing of a complaint against, *inter alia*, Tony Klock. The adversary proceeding was initially assigned adversary proceeding number 04-1479 and placed on Judge Harris' docket, but was transferred to this Court's docket on April 10, 2007 and assigned adversary proceeding number 07-5061.

adversary proceeding and will not be dealt with herein.

### **Civil Contempt**

The UST seeks an order holding Tony Kloak, Foreclosure Recyclers, Inc., Associated Real Estate Counseling, Inc., Mattie Williams and Ruby Hollins in contempt of Court for violating General Order 05-3. To establish civil contempt, the UST had the burden of establishing by clear and convincing evidence a knowing violation of “a definite and specific order of the court requiring [them] to perform or refrain from performing a particular act or acts with knowledge of the court's order.” *See Rolex Watch U.S.A. Inc. v. Crowley*, 74 F.3d 716, 720 (6<sup>th</sup> Cir. 1996). General Order 05-3 establishes a maximum fee that is presumed to be reasonable and equal to the value of the services provided by a petition preparer. General Order 05-3 does not foreclose the possibility that in certain circumstances the value of the services could be worth more or less than \$125. Furthermore, General Order 05-3 provides that a bankruptcy petition preparer who charges more than the value of the services provided shall be subject to sanctions under section 110 of the Bankruptcy Code. The Court has already addressed above the appropriate sanctions under section 110 and therefore, does not address them here.

### **CONCLUSION**

For the reasons stated above the UST Motion is granted in part, and denied without prejudice, in part. Judgment is entered against Foreclosure Recyclers, Inc., Tony Kloak, Ruby Hollins, Mattie Williams and Associated Real Estate Counseling, jointly and severally, in the amount of \$2,670 payable to the Debtors and \$4,000 payable to the UST.

###

cc: Saul Eisen, U.S. Trustee for Region 9  
Tony Kloak  
Foreclosure Recyclers, Inc  
Mattie Williams  
Barbara Brown Daniels  
Associated Real Estate Counseling  
Ruby Hollins  
Chris Manos  
Cynthia and Jeffrey Hanzel  
Jerome Holub  
Robert Thomas