

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
03 JUN 25 PM 3:22
UNITED STATES COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-14324
)
RHONDA RUFF,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

Ronald Smedley of Freshstart Bankruptcy Service served as the petition preparer in this case. The United States Trustee, contending that Mr. Smedley overstepped the bounds of activity for a petition preparer and engaged in the unauthorized practice of law, moves that he be ordered to return the fees paid by the debtor. (Docket 12). The Court held an evidentiary hearing on the motion on June 19, 2003. The United States Trustee presented his case through the debtor's testimony and exhibits. Mr. Smedley was served with the motion, but did not appear at the hearing or otherwise oppose the motion.

I.

The Court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

II.

Based on the evidence, the Court makes these findings of fact and conclusions of law:

Ronald Smedley is not a licensed attorney. The debtor, Rhonda Ruff, paid Mr. Smedley \$199.00 to prepare her Chapter 7 bankruptcy petition. She also gave him \$100.00 toward the

filing fee, but Mr. Smedley only paid \$50.00 of this amount to the Clerk's office.

The debtor's case, which was filed on April 7, 2003, had problems from the outset. These included: (1) identifying the debtor's first name on the petition as "Honda" rather than "Rhonda;" and (2) deliberately omitting certain creditors. The debtor did not schedule all of her creditors because Mr. Smedley told her it was not necessary to do so. Instead, he told her that she could "pick and choose" who she wanted to include in the bankruptcy and who she wanted to pay. He also told her that she could list her last name as "Ruff" even though her legal name has been "Ruff-Queen" since her February 2003 marriage.

The debtor went back to Mr. Smedley and discussed these deficiencies with him. He responded by preparing two legal pleadings for her: a motion to amend the bankruptcy petition to add creditors to Schedule F and a motion to amend the petition to correct the debtor's first name.¹ Mr. Smedley told the debtor that he normally charged a \$35.00 fee for this service; but he would waive the fee in her case because she was upset and because the pleadings were necessary due to his error. The two motions were filed on May 16, 2003.

The United States Trustee contends that preparing and filing the motions constitutes the unauthorized practice of law.² Section 110 of the Bankruptcy Code governs the activities of

¹ The bankruptcy petition lists the debtor's name as Honda Ruff. The motion to amend requests that the name be corrected to Rhonda Ruff. The Court granted the motion without the benefit of the additional information offered at the hearing that this is still not the debtor's legal name. The Court will issue an amended order identifying the debtor as "Rhonda Ruff-Queen" aka "Rhonda Ruff."

² The Court notes that there are other issues raised by the evidence, including a possible violation of Bankruptcy Code § 110(g)(1). This opinion is, however, limited to the practice of law issue raised by the United States Trustee. The Court also notes that the debtor's conduct in this case has been far from exemplary (*see*, for example, her explanation for not responding to an earlier Court order). Again, however, that is not the issue before the Court.

petition preparers:

Congress added §110 to the Code in 1994 to address the growing number of non-lawyers who were offering consumers unregulated bankruptcy services and engaging in the unauthorized practice of law. *See In re Gutierrez*, 248 B.R. 287 (Bankr. W.D. Tex. 2000); *Moore v. Jencks (In re Moore)*, 232 B.R. 1 at n. 10 (Bankr. D. Me. 1999). The new Code section regulates the activities of individuals, other than lawyers and their employees, who are paid to prepare documents for filing by a debtor. 11 U.S.C. §§ 110(a)(1) and (2). One of the underlying purposes of this law is to protect consumers with financial problems from fraud and abuse by such preparers. S. Rep. No. 103-168, at 51 (1993). While Congress felt it was appropriate for petition preparers to assist debtors with a ministerial act such as typing, Congress rejected the notion that the preparers may go beyond that to give legal advice and services to debtors because:

[t]hese preparers often lack the necessary legal training and ethics regulation to provide such services in [an] adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system.

H.R. Rep. No. 103-835 (1994), reprinted in 1994 U.S.C.C.A.N. 3340, 3365. *See In re Mullikin*, 231 B.R. 750 (Bankr. W.D. Mo. 1999). The legislation restricts the kinds of activities that a petition preparer can perform, as well as the manner in which a preparer may collect fees for the services undertaken.

In re Walker, 257 B.R. 493, 495 (Bankr. N.D. Ohio 2001) (footnote deleted). As this Court previously noted, “§ 110 permits a lay person to assist another person with ministerial acts such as typing a petition. It does not authorize a non-lawyer to give substantive advice and counsel about the bankruptcy process or otherwise engage in the practice of law.” *In re ICLNDS Notes Acquisition, LLC.*, 259 B.R. 289, 295 (Bankr. N.D. Ohio 2001).

State law, in this case Ohio law, defines what constitutes the unauthorized practice of law. *Id.* at 294. Under Ohio law:

[t]he practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law.

Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (Syllabus ¶ 1) (Ohio 1934). The practice of law includes counseling clients on issues related to bankruptcy relief. *See Dayton Bar Assoc. v. Andrews*, 79 Ohio St.3d 109, 679 N.E.2d 1093 (Ohio 1997); *Columbus Bar Assoc. v. Flanagan*, 77 Ohio St.3d 381, 674 N.E.2d 681 (Ohio 1997). “Given the Ohio Supreme Court’s expansive definition of what constitutes the unauthorized practice of law [a petition preparer] is essentially 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.” *In re Alexander*, 284 B.R. 626, 635 (Bankr. N.D. Ohio 2002).

When Mr. Smedley prepared the motion to amend the debtor’s bankruptcy petition to include additional creditors, he engaged in the unauthorized practice of law. He consulted with the debtor regarding a legal problem (i.e. the deliberate omission of certain creditors from her bankruptcy schedules), identified a solution to the problem, drafted a legal pleading to effectuate that solution, and then either filed the motion or had it filed in her bankruptcy case. Services of this type clearly exceed the limited services which a petition preparer may perform. Mr. Smedley also engaged in the unauthorized practice of law when he prepared the motion to amend the

petition to reflect the debtor's correct name because he again analyzed the debtor's legal problem, identified what he felt the solution should be (which was not, the Court notes, an acceptable solution as discussed in footnote 1), and drafted a pleading (not a form) which was then filed with this Court.

As a remedy, the United States Trustee asks that Mr. Smedley be required to return the fees he was paid. This request is consistent with Bankruptcy Code §110(h)(2) which states that:

The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee . . . found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

11 U.S.C. § 110(h)(2).

At the hearing, the debtor expressed frustration with the path her case has taken and the complications caused by the mistakes in her bankruptcy filing. Those problems are attributable to Mr. Smedley's participation in her case, which provided little or no value to the debtor. Given the lack of value, coupled with Mr. Smedley's unauthorized practice of law, Mr. Smedley is required to disgorge the fees paid. *See In re Farness*, 244 B.R. 464 (Bankr. D. Idaho 2000); *In re Gutierrez*, 248 B.R. 287 (Bankr. W.D. Texas 2000).

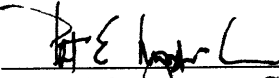
The Court finds that Mr. Smedley was paid \$249.00, consisting of the \$199.00 petition preparer fee and \$50.00 of the \$100.00 which should have been, but was not, used to pay the Court filing fee. The United States Trustee requests that the fees be returned to the debtor. Section 110(h)(2) provides, however, that those funds are to be turned over to the Chapter 7 trustee. The \$249.00 is, therefore, to be turned over to the Chapter 7 trustee and "the debtor may [then] exempt [those funds] under section 522(b)." 11 U.S.C. § 110(h)(2).

III.

For the reasons stated, the United States Trustee's motion is granted and Ronald Smedley is ordered to turn over \$249.00 to Richard Baumgart, the Chapter 7 Trustee.

A separate order will be entered reflecting this decision.

Date: 25 Jun 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Dean Wyman Esq.
Mr. Ronald Smedley
Ms. Rhonda Ruff-Queen
Richard Baumgart, Trustee

By: Joyce L. Gordon, Secretary

Date: 6/25/03

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
03 JUN 25 PM 3:22

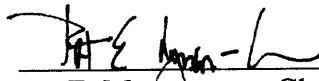
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-14324
)
RHONDA RUFF,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **JUDGMENT**

For the reasons stated in the Memorandum of Opinion filed this same date, the United States Trustee's motion is granted and Ronald Smedley is ordered to turn over \$249.00 to Richard Baumgart, the Chapter 7 Trustee.

IT IS SO ORDERED.

Date: 25 June 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Dean Wyman Esq.
Mr. Ronald Smedley
Ms. Rhonda Ruff-Queen
Richard Baumgart, Trustee

By: Joyce L. Gordon, Secretary

Date: 6/25/03