

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
03 JUN 27 PM 3:30  
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 03-14613  
)  
ANDREA WASHINGTON, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**  
)  
)

Ronald Smedley, a non-lawyer who does business as Freshstart Bankruptcy Service, prepared the bankruptcy petition in this case for the debtor Andrea Washington. In doing so, he did not comply with Bankruptcy Code §110, which sets out the rules a petition preparer must follow. As a result, the United States Trustee (UST) filed a motion to disgorge fees and impose fines on Mr. Smedley, which was set for hearing on June 19, 2003. (Docket 10). The UST presented his case through exhibits and the testimony of the debtor. Mr. Smedley did not appear at the hearing or otherwise oppose the motion. On that same date, the Court heard the issue of whether the debtor's case should be dismissed for failure to pay the case filing fee. (Docket 7).<sup>1</sup>

**JURISDICTION**

The Court has jurisdiction to determine this matter 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).

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<sup>1</sup> The Court entered an Order requiring Ms. Washington to appear and show cause why her case should not be dismissed for failure to pay the fee. The initial show cause hearing was held on May 29, 2003 and adjourned to June 19, 2003. Ms. Washington attended both hearings.

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**FACTS**

**I. The petition preparation**

Andrea Washington filed her Chapter 7 petition on April 11, 2003. She paid Ronald Smedley<sup>2</sup> \$199.00 to prepare her petition.<sup>3</sup> The Statement of Financial Affairs requires a debtor to list any payments made to anyone for petition preparation within one year of the filing. The Statement prepared by Mr. Smedley for the debtor states that no payments were made. (Docket 1, Statement of Financial Affairs No. 9). The Bankruptcy Code requires a petition preparer to file a declaration disclosing preparation fees within 10 days after the case is filed. 11 U.S.C. § 110(h)(1). Mr. Smedley did not file that declaration.

**II. The Court filing fee**

There is a court filing fee of \$200.00 for every Chapter 7 case. Ms. Washington paid Mr. Smedley an additional \$200.00 to be used for this fee, with \$75.00 paid on April 4, 2003 and \$125.00 on April 15, 2003. Mr. Smedley prepared an application for the debtor to pay her filing fee in installments. The application does not state that Mr. Smedley prepared it and it does not contain his signature, his address, or his social security number. The application was filed on April 14, 2003 and \$50.00 of the filing fee was paid at that time, even though the debtor had paid \$75.00 to Mr. Smedley. The Court, unaware of these events, granted the request to pay the

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<sup>2</sup> Tamara Clark, an employee of Mr. Smedley's, performed these services at Mr. Smedley's direction.

<sup>3</sup> Ms. Washington paid Mr. Smedley an additional \$25.00 fee to prepare an amendment to her bankruptcy filing on April 15, 2003. The UST's motion does not address this payment and it was not discussed in argument.

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\$150.00 balance due in three installments: \$50.00 before April 17, 2003; \$50.00 before May 1, 2003; and \$50.00 before May 15, 2003.

One additional payment of \$50.00 was made on April 17, 2003. The final two installment payments were not made. As is customary under these circumstances, the Court issued a show cause order for Ms. Washington to appear and explain why the case should not be dismissed for failure to pay the filing fee. Ms. Washington appeared and testified that she had paid the \$200.00 to Mr. Smedley. One hundred dollars of the filing fee remains unpaid.

**DISCUSSION**

**I**

The UST requests that various fines be imposed against Mr. Smedley because he did not follow the requirements for bankruptcy petition preparers set out in Bankruptcy Code §110. The UST also requests that Mr. Smedley be required to disgorge his petition preparation fee.

The UST alleges that Mr. Smedley failed to comply with §110(c) when he prepared the debtor's application to pay the filing fee in installments. That section provides:

(c)(1) 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.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

11 U.S.C. § 110(c). Mr. Smedley did not comply with § 110(c)(1) because the fee installment application he prepared does not include his social security number as an identifying number.<sup>4</sup> Mr. Smedley did not present any evidence to suggest that this failure is due to reasonable cause and so a \$500.00 fine will be imposed under § 110(c)(3).

The UST also alleges that Mr. Smedley did not comply with § 110(g)(1) and § 110(h)(1). Those sections prohibit a petition preparer from receiving payments from a debtor in connection with the court filing fee and require a petition preparer to file a declaration regarding fees charged to a debtor:

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

\* \* \*

(h)(1) Within 10 days after the date of the filing of the petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

11 U. S. C. §§ 110(g)(1) and (h)(1). Mr. Smedley did not comply with either of these provisions.

Ms. Washington's testimony establishes that Mr. Smedley collected the \$200.00 filing fee from her on two different dates. These activities constitute two violations of § 110(g)(1). The remedy is a fine of not more than \$500.00 for each violation. *See* 11 U.S.C. § 110(g)(2). In this case, Mr. Smedley's behavior is particularly egregious. Not only did he collect money in violation of the statute, but he then paid only \$50.00 of it to the Court and prepared an

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<sup>4</sup> In addition, the application does not include Mr. Smedley's name, signature or address as required by § 110(b)(1). *See* 11 U.S.C. § 110(b)(1). That inadequacy, however, is not the subject of the UST's motion.

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application stating that the debtor was “unable to pay the Filing Fee except in installments.” To make matters worse, Mr. Smedley then paid only \$50.00 of the remaining \$150.00 provided to him by the debtor, leaving the debtor to face an order to show cause why her case should not be dismissed for failure to pay the filing fee. In light of these facts, it is appropriate to impose a \$1,000.00 fine.

Mr. Smedley also violated § 110(h)(1) when he failed to file a declaration disclosing the \$199.00 fee received from Ms. Washington. The remedy for violating this section is to disallow and order turnover of any fee exceeding the value of the services rendered. *See* 11 U.S.C. § 110(h)(2). Mr. Smedley’s failure to comply with the § 110 requirements and his failure to pay her filing fee has caused Ms. Washington great inconvenience. She was required to appear for hearings on the fee issue and also for the hearing on the UST’s motion. Mr. Smedley’s services were of little or no value to her under the circumstances and he is, therefore, required to turnover the entire \$199.00 fee. The UST requests that the fee be returned to the debtor. The statute provides that those funds are to be turned over to the Chapter 7 trustee. *See* § 110(h)(2). The \$199.00 is, therefore, to be turned over to the Chapter 7 trustee.<sup>5</sup>

**II.**

The remaining issue is that \$100.00 of the filing fee is still unpaid. Generally, when a debtor fails to pay the fee the case is dismissed. *See* 11 U.S.C. § 707(a)(2) (providing that a court may dismiss a Chapter 7 case for cause, which includes failing to pay the filing fee). In this case, however, the debtor paid the filing fee to Mr. Smedley which, while ill-advised, protects her from

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<sup>5</sup> The debtor may then exempt the funds under 11 U.S.C. § 522(b). *See* 11 U.S.C. § 110(h)(2).

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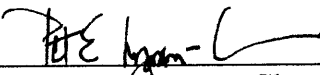
dismissal at this point. At the hearing on the show cause, the UST asked that Mr. Smedley be required to pay the filing fee, which is the best resolution under these facts. Mr. Smedley is, therefore, to pay the remaining \$100.00 filing fee to the Clerk of Court. See 11 U.S.C. § 105(a). The show cause hearing on the filing fee issue is concluded.

**CONCLUSION**

For the reasons stated, the UST's motion is granted. Ronald Smedley is ordered to pay \$1,500.00 to the Clerk of Court as a fine under Bankruptcy Code §110. Mr. Smedley is also ordered to turn over \$199.00 to Lauren Helbling, the Chapter 7 trustee. Finally, Mr. Smedley is ordered to pay the remaining \$100.00 filing fee to the Clerk of Court immediately.

A separate order will be entered reflecting this decision.

Date: 27 Jun 2003

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Dean Wyman, Esq.  
Mr. Ronald Smedley  
Ms. Andrea Washington  
Lauren Helbling, Trustee

By: Joyce L. Gordon, Secretary  
Date: 6/27/03

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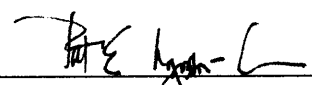
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ANDREA WASHINGTON, ) Chapter 7  
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Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**  
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For the reasons stated in the Memorandum of Opinion filed this same date, the United States Trustee's motion is granted. (Docket 10). Ronald Smedley is required to pay \$1,500.00 to the Clerk of Court as a fine under 11 U.S.C. § 110. Ronald Smedley is also required to turn over his \$199.00 petition preparation fee to Lauren Helbling, the Chapter 7 trustee. Additionally, Ronald Smedley is to immediately pay the remaining \$100.00 filing fee to the Clerk of Court.

IT IS SO ORDERED.

Date: 27 June 2003

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Dean Wyman, Esq.  
Mr. Ronald Smedley  
Ms. Andrea Washington  
Lauren Helbling, Trustee

By: Joyce L. Gordon, Secretary

Date: 6/27/03