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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 03-12593  
)  
BRIAN WARE and ) Chapter 7  
TYREE WARE, )  
)  
Debtors. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

Ronald Smedley, who is not an attorney, served as the bankruptcy petition preparer for the debtors Brian and Tyree Ware. The United States trustee filed a motion to review fees, to disgorge fees, and to impose fines upon Mr. Smedley. (Docket 10, 16). Mr. Smedley objected to the motion. (Docket 12). The Court held an evidentiary hearing on July 9, 2003, at which time Dean Wyman appeared for the United States trustee and Mr. Smedley represented himself.

**JURISDICTION**

Jurisdiction exists 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).

**THE POSITIONS OF THE PARTIES**

Bankruptcy Code § 110 is titled "Penalty for persons who negligently or fraudulently prepare bankruptcy petitions." 11 U.S.C. § 110. The United States trustee (UST) contends that Ronald Smedley violated the statute by these acts:

- (1) failing to identify himself as the person who prepared the debtors' application to pay filing fees in installments;
- (2) accepting court filing fees from the debtors;

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- (3) failing to file a fee disclosure within ten days after the bankruptcy petition was filed; and
- (4) using language in his advertisements that is similar to the word "legal."

Mr. Smedley agrees that he violated Bankruptcy Code § 110(g)(1) when he accepted court filing fees from the debtors, but states he did so without knowing it was improper. He has stopped that practice. With respect to the remaining allegations, he denies that his actions violated the Bankruptcy Code.

The UST presented his case through David Egar (Deputy Clerk in Charge of the Cleveland office of the Bankruptcy Court), attorney Sheldon Stein (who testified as an expert), the debtors Brian and Tyree Ware, Mr. Smedley, and exhibits. Mr. Smedley presented his case through his own testimony, cross-examination, and exhibits.

**FACTS**

**I.**

Ronald Smedley has prepared more than 200 bankruptcy petitions for friends and relatives since 1985. He and his wife have also personally filed bankruptcy.

Mr. Smedley operates under the tradename "Freshstart Bankruptcy Service," a business he apparently opened in late February 2003. The business is owned by a corporation. Mr. Smedley seems to be one of the 5 or 6 shareholders.

Mr. Smedley described his business as "a typing service for people who want to file Chapter 7." He advertises in The Cleveland Yellow Pages telephone directory, The Plain Dealer, Scene magazine, The Sun Press, and a few other places.<sup>1</sup> His Yellow Pages ad includes this

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<sup>1</sup> Mr. Smedley also created a Freshstart Bankruptcy Service business card featuring the phrases "Your key to freedom from debt" and "Chapter 7 specialists." The Court believed his testimony that he had not distributed the card and so has not considered it in this opinion.

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language: "Do it yourself bankruptcy. Self-help system. Five easy steps. Input, print, file, appear in court, you get your discharge!" The Scene ad states: "Bankruptcy Only \$199!! Fire your attorney!! Chapter 7 Save Hundreds of dollars in Attorney fees. Call our Hotline 216-581-4400." He placed another ad, perhaps in the Sun Press, that reads:

FRESHSTART BANKRUPTCY SERVICE  
5311 Northfield Road (Lower Level)  
Bedford Heights, OH 44146  
CALL (440) 843-2456 FOR AN APPOINTMENT

\$199! Regular price \$299      *Tired of creditor harrassment[sic]? Fight back!  
Defend against garnishments-evictions-judgments-  
repossessions-credit card debt-utility shut-offs!*

*We specialize in chapter 7 bankruptcy petition  
preparation and filing services! Try our self-help  
program and save attorney fees!*

Mr. Smedley used this language because "when you just can't work with some creditors, there is bankruptcy." He drafted the ads after reviewing information from other bankruptcy operations and attorneys. He was not comparing himself to attorneys because he "likes to think he is better than that." Mr. Smedley stated that he included the language "We specialize in chapter 7" because Freshstart only does Chapter 7 petitions. This is, however, contradicted by the information sheet Freshstart gives to customers that says "We specialize in Chapter 7 bankruptcies. However, our software can also prepare Chapter 11 and 13 bankruptcies at additional costs." (UST Exh. 6).

Mr. Smedley uses Best Case Solutions software to prepare Chapter 7 petitions. He prepared the petition and related papers for the debtors in this case using the software. Mr. Smedley was asked how the application to pay filing fees in installments was created. He

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responded that the computer queries: is the filing fee attached? If the answer is “no,” the program automatically generates an installment fee application.

**II.**

The debtors learned about Freshstart Bankruptcy Service through a Plain Dealer ad. They had previously consulted at least one attorney and decided they wanted to file for relief under Chapter 7 of the Bankruptcy Code. When Freshstart Bankruptcy Service used the phrase “Chapter 7 specialists” in its ad, the debtors understood it to mean that everything would be done right and they would not have to come to court. Also, that all creditors would be “clear” and they would not owe any money.

The Wares met with Ronald Smedley for about 30-45 minutes and gave him information about their debts. As they talked, Mr. Smedley input information into a computer and made some handwritten notes. He asked them to come back to review the documents for accuracy and to sign them. The Wares did so (separately) several days later. At that time, they reviewed and approved the petition, schedules, statement of financial affairs, and application to pay filing fees in installments.

On March 5, 2003, Mr. Smedley filed the Wares’s petition and application to pay filing fee in installments. He also paid \$50.00 of the \$200.00 filing fee. In the petition, the bankruptcy petition preparer is identified as “Freshstart Bankruptcy Service” followed by a social security number. A few lines later, there is a signature that is illegible. The application to pay fees in installments does not indicate that it was prepared by anyone other than the debtors.

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III.

The debtors paid a total of \$400.00 to Mr. Smedley on these dates:

- February 28, 2003:
  - \$275.00 to prepare the petition and schedules;
  - \$25.00 for him to file the petition at the Court; and
  - \$50.00 as the first installment of the Court filing fee.
  
- March 24, 2003:
  - \$50.00 for the Court fees.<sup>2</sup>

On April 28, 2003, Mr. Smedley filed a Disclosure of Compensation of Bankruptcy Petition Preparer in which he stated that he received \$398.00 from the debtors for document preparation services; specifically the Chapter 7 petition and schedules. The declaration bears the printed name "Ron Smedley dba Freshstart Bankruptcy Service" and his social security number.

Sheldon Stein, an attorney who limits his practice to bankruptcy, testified that in his opinion the reasonable value of the services rendered by Mr. Smedley was \$100.00. He arrived at this number by (1) considering that the Best Case software has a number of drop down menus that save time for the typist; and (2) calculating based on his own use of the same software that it would take a typist 2-3 hours to type the information provided by the debtors. Mr. Stein testified further that the use of the name Freshstart Bankruptcy Service was deceptive and may lead people to think that they are getting legal services.

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<sup>2</sup> The Court recognizes that these numbers do not account for the full \$200.00 filing fee. The parties did not, however, raise that issue.

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**DISCUSSION**

The UST requests that Mr. Smedley be fined 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 to the Chapter 7 trustee.

**I. 11 U.S.C. § 110(c)(1)**

The UST first alleges that Mr. Smedley failed to comply with §110(c) when he prepared the debtors' application to pay the filing fee in installments. The specific deficiency is that Mr. Smedley did not include his social security number. Section 110(c) states:

(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). The face of the application shows that Mr. Smedley did not provide his identifying number.<sup>3</sup> The explanation offered by Mr. Smedley was that the software generated this document and he was not aware of the statute. This does not establish reasonable cause to excuse the failure. Congress added § 110 in 1994 to govern the behavior of bankruptcy petition

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<sup>3</sup> The application actually does not mention Mr. Smedley at all. There is no statement of his name, signature and address as required by § 110(b)(1). See 11 U.S.C. § 110(b)(1). That failure, however, was not cited in the UST's motion.

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preparers. Among other things, Congress deemed it important that each document prepared by a bankruptcy petition preparer be fully and clearly marked with that information. Mr. Smedley has had nine years to familiarize himself with the statute. The obligation is his, not that of the computer.

The question then becomes one of the appropriate fine. The statute provides for a fine of up to \$500.00. 11 U.S.C. § 110(c)(3). Although Mr. Smedley did not include the required information on the application, he did include his social security number with the petition. As a result, the Court concludes that a lesser fine of \$250.00 should be imposed for failing to include the identifying number on the application.

**II. 11 U.S.C. §§ 110(g)(1) and (h)(1)**

Second, the UST alleges that Mr. Smedley failed to comply with § 110(g)(1) and § 110(h)(1). Those sections prohibit a petition preparer from collecting court filing fees from a debtor and they also 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).

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Mr. Smedley collected \$100.00 of the court filing fee from the debtors on two different dates. These activities constitute two violations of § 110(g)(1) and the remedy is a fine of not more than \$500.00 for each violation. *See* 11 U.S.C. § 110(g)(2). Again, Mr. Smedley's explanation was that he was unaware of the prohibition and when he recently learned of it, he changed his procedures. Mr. Smedley should have known about this prohibition, especially given the scope of his activity in this field. His explanation does not establish good cause and a \$125.00 fine will be imposed for each violation, for a \$250.00 total.

Mr. Smedley was required to file a fee disclosure statement no more than 10 days after the March 5, 2003 petition filing date. 11 U.S.C. § 110(h)(1). He did not do so until April 28, 2003, well beyond the statutory time frame. The tardy disclosure statement is inaccurate because it states that the debtors paid \$398.00 for document preparation services. In fact, the amount paid was \$300.00. This late and inaccurate filing violates § 110(h)(1).

The remedy is to disallow and order turnover of any fee exceeding the value of the services which Mr. Smedley rendered. *See* 11 U.S.C. § 110(h)(2). The UST's expert witness testified that the value of Mr. Smedley's services to the debtors was \$100.00. Although Mr. Smedley questioned the manner in which the witness arrived at that number, the Court finds that the witness adequately explained the basis for his opinion and further accepts the valuation testimony as a reasonable rate for 2-3 hours of typing services.<sup>4</sup> As Mr. Smedley was paid

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<sup>4</sup> Mr. Smedley also argued that the \$100.00 valuation did not take into account certain unquantified expenses such as rent, the computer program, training, and labor. The preparer's office overhead is not necessarily the measure of the services rendered to a debtor.



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\$300.00 in fees, he is required to turn over \$200.00 to the Chapter 7 trustee.<sup>5</sup>

**III. 11 U.S.C. § 110(f)(1)**

As a final point, the UST argues that Mr. Smedley's advertisements violated § 110(f)(1):

(f)(1) A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

11 U.S.C. § 110(f)(1). The remedy for each violation is a fine of not more than \$500.00. *See* 11 U.S.C. § 110(f)(2). The UST requests a \$500.00 fine.

This Court has noted that “[o]ne of the underlying purposes of [section 110] is to protect consumers with financial problems from fraud and abuse by [petition] preparers.” *In re Walker*, 257 B.R. 493, 495 (Bankr. N.D. Ohio 2001) (citing S.Rep. No. 103-168, at 51 (1993)). With that purpose in mind, § 110(f) “is appropriately viewed as a measure meant to ensure that debtors understand exactly what they will and will not receive from bankruptcy petition preparers. Petition preparer advertising must keep well clear of any suggestion that the preparer will be offering legal services or insights.” *Fessenden v. Ireland (In re Hobbs)*, 213 B.R. 207, 215 (Bankr. D. Me. 1997).

Section 110(f) prohibits a preparer from using the word “legal or any similar term” in advertisements. Violations of this provision have been found where a petition preparer’s name itself incorporates the term “legal” or where that term is used in an advertisement. *See, for example, In re Brokenbrough*, 197 B.R. 839, 844 (Bankr. S.D. Ohio 1996) (doing business under the names “Legal Aid Services” and “Legal Aid Servs.” found to violate § 110(f)(1)); *In re*

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

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*Farness*, 244 B.R. 464, 468 (Bankr. D. Idaho 2000) (ads using the phrases “self-help legal alternatives” and “legal form preparation” found to violate §110 (f)(1)). Use of the term “paralegal” and similar terms have also been found to violate § 110(f). *See, for example, In re Gomez*, 259 B.R. 379, 385 (Bankr. D. Colo. 2001) (using the trade name “Eagle Paralegal, LTD” and ads offering “fast paralegal or attorney service” found to violate § 110(f)(1)); *In re Moffett*, 263 B.R. 805, 813 (Bankr. W.D. Ky. 2001) (advertising as a paralegal held to be a violation). Additionally, advertisements which advise people who have filed petitions “that they can ‘by law, file again’” and which clearly give the impression that legal services are being offered have been found to violate § 110(f)(1). *See In re Ali*, 230 B.R. 477, 482 (Bankr. E.D. N.Y. 1999).

The UST acknowledges that Mr. Smedley does not use the term “legal” in his advertisements. He argues instead that the ads include terms which, when viewed comprehensively, are similar to the term “legal.” Citing Mr. Smedley’s use of the tradename Freshstart Bankruptcy Service and the phrases used in his ads, the UST contends that Mr. Smedley is suggesting that he offers a service which is similar to legal services.

On review, the Court finds that the ads do not violate § 110(f)(1). The advertisements do not include the prohibited term “legal” or any similar term and they do not suggest that legal services are being provided. Both the Cleveland Yellow Pages entry and Sun Press ad indicate that Mr. Smedley is offering a self-help program rather than legal services. While the Scene ad is not as clear on that point, it does not state that legal services are being provided. The Plain Dealer ad which brought the debtors to Mr. Smedley was not introduced into evidence. Based on the testimony about it, however, it does not include improper terms nor does it appear that the debtors were led to believe that Mr. Smedley was offering legal services. What Mr. Smedley’s

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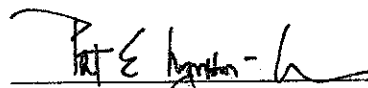
ads really suggest is that an individual with financial troubles does not need legal representation because bankruptcy relief can be obtained easily and successfully without an attorney. That suggestion is incorrect and misleading, but it does not violate the terms of § 110(f)(1).

CONCLUSION

For the reasons stated, the UST's motion is granted in part. Ronald Smedley is ordered to pay \$500.00 to the Clerk of Court as a fine for violating Bankruptcy Code § 110. Mr. Smedley is also ordered to turn over \$200.00 of the fee which he was paid in this case to the Chapter 7 trustee, Steven Davis.

A separate order will be entered reflecting this decision.

Date: 18 July 2003

  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Dean Wyman, Esq.  
Mr. Ronald Smedley  
Steven Davis, Trustee  
Brian and Tyree Ware

By: Joyce L. Gordon Secretary  
Date: 7/18/03

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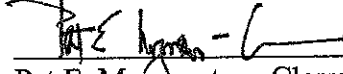
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In re: ) Case No. 03-12593  
)  
BRIAN WARE and ) Chapter 7  
TYREE WARE, )  
) Judge Pat E. Morgenstern-Clarren  
Debtors. )  
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the United States trustee's motion to review fees, disgorge fees, and impose fines against Ronald Smedley is granted in part. (Docket 10). Ronald Smedley is to pay \$500.00 to the Clerk of Court for violating 11 U.S.C. § 110(c)(1) and (g)(1). He is also to turn over \$200.00 to Steven Davis, chapter 7 trustee, for violating 11 U.S.C. § 110(h)(1).

IT IS SO ORDERED.

Date: 18 July 2003

  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on : Dean Wyman, Esq.  
Mr. Ronald Smedley  
Brian and Tyree Ware  
Steven Davis, Chapter 7 trustee

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