

THIS OPINION IS NOT INTENDED
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
00 OCT -1 AM 8:27
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-14615
)
CASEY SHANDOR, JR.,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

The United States trustee moves to require Ronald Smedley, the debtor's petition preparer, to disgorge fees because he allegedly collected his own fees from the debtor before the debtor paid the court filing fee, contrary to the bankruptcy rules. The United States trustee also asks that Mr. Smedley be fined for collecting court costs from the debtor in violation of 11 U.S.C. §110(g)(1). (Docket 15). Mr. Smedley opposes the motion.¹ (Docket 21, 27). The court held an evidentiary hearing on September 24, 2003. Linda Battisti appeared for the UST. Mr. Smedley, who is representing himself, did not appear. The debtor Casey Shandor was the only witness. For the reasons stated below, the United States trustee's motion is granted in part and denied in part.

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).

¹ Mr. Smedley filed a request for an evidentiary hearing and a motion to dismiss which the court will treat as a further objection.

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FACTS

A few days before April 11, 2003, the debtor hired non-lawyer Ronald Smedley of Freshstart Bankruptcy Services to prepare his bankruptcy petition. At that time, he paid Mr. Smedley \$249.00, of which \$199.00 was to prepare the documents. The debtor testified that the additional \$50.00 was for Mr. Smedley to bring the papers to the courthouse, apparently to save the debtor a trip downtown.

Mr. Smedley filed the debtor's bankruptcy case on April 11, 2003 and paid \$50.00 of the filing fee. (Docket entry for 4/11/03). On April 14, 2003, someone filed the debtor's application to pay the \$200.00 filing fee in four installments, with the first payment due on May 2, 2003 and the last on June 6, 2003.² The court approved the application. (Docket 2, 3). On April 28, 2003, Mr. Smedley filed a "Disclosure of Compensation of Bankruptcy Petition Preparer" stating that he had received \$199.00 from the debtor for preparing his petition. (Docket 6). The debtor has paid \$150.00 of the court fee,³ with \$50.00 still due.

DISCUSSION

The UST asks that Mr. Smedley be required to: (1) refund his petition preparation fee to the debtor because he violated bankruptcy rule 1006(b)(3); and (2) pay a \$500.00 fine for collecting court costs in violation of bankruptcy code §110(g)(1). Mr. Smedley opposes this request.

² No explanation has been offered for why the application did not account for the fact that \$50.00 had already been paid.

³ Of this, \$50.00 was paid with the filing and \$100.00 was paid on June 19, 2003. *See* docket entries for 4/11/03 and 6/19/03.

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Bankruptcy Rule 1006(b)(3)**

Bankruptcy rule 1006(b)(3) requires the court filing fee to be paid in full before fees are paid for bankruptcy services rendered to the debtor:

(3) *Postponement of Attorney's Fees.* The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case.

FED. R. BANKR. P. 1006(b)(3) (emphasis added). This rule implements Congress's intent that the bankruptcy system be financially self-sustaining. *See Collier on Bankruptcy* ¶ 1006.02 (15th ed. rev. (2003)). The UST asserts that Mr. Smedley received his petition preparation fee in violation of this rule and asks that Mr. Smedley be required to refund the fee to the debtor. Mr. Smedley acknowledges the timing of his fee payment, but argues that he should not be penalized because he is entitled to be compensated and he fully disclosed his fee.⁴

Mr. Smedley received his fee before the case filing fee was paid, which is a clear violation of the bankruptcy rule. In fact, the case filing fee is still not paid in full, while Mr. Smedley received his payment long ago. Although rule 1006(b)(3) does not prescribe a penalty, there is case law to support requiring Mr. Smedley to disgorge his entire fee. *See In re Campanella*, 207 B.R. 435, 450 (Bankr. E.D. Pa. 1997); *Foulston v. Jones (In re Robinson)*, 162 B.R. 319, 326 (Bankr. D. Kan. 1993). The law does not, however, require this result. The court

⁴ The court notes that the compensation disclosure must be filed within 10 days after the petition is filed. 11 U.S.C. § 110(h)(1). In this case, the disclosure should have been filed no later than April 21, 2003. Mr. Smedley did not meet this statutory deadline.

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concludes that the purposes of the rule will be served by requiring Mr. Smedley to pay \$50.00 to the clerk of court, which is the amount of the unpaid court fee. *See* 11 U.S.C. § 105(a).

Section 110(g)(1)

Bankruptcy code § 110(g)(1) provides:

(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.

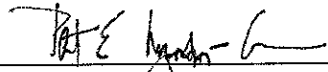
11 U.S.C. § 110(g)(1). The UST argues that Mr. Smedley received \$50.00 for payment of the filing fee from the debtor in violation of this statute. While the debtor suggested at a preliminary hearing on this matter that he thought his \$50.00 payment was for the court fee, his testimony at the evidentiary hearing was that the \$50.00 was essentially a delivery fee for bringing the papers to court. This is difficult to reconcile with the fact that Mr. Smedley paid a \$50.00 filing fee installment when he filed the petition. But it is consistent with the installment application that said that nothing had been paid when the petition was filed. It is possible that Mr. Smedley mistakenly paid the fee thinking that the debtor had given him the money when he did not, although this seems unlikely. In any event, the evidence is uncertain enough that the court concludes the UST did not prove a violation of § 110(g)(1). The request to impose a fine for violation of this statute is, therefore, denied.

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CONCLUSION

For the reasons stated, the UST's motion is granted in part and denied in part, with Ronald Smedley directed to pay \$50.00 to the clerk of court for violating bankruptcy rule 1006(b)(3). A separate order will be issued reflecting this decision.

Date: 1 October 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Mr. Casey Shandor

By: Joyce L. Gordon, Secretary

Date: 10/1/03

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) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the United States trustee's motion to impose fines upon Ronald Smedley and to disgorge fees is granted in part and denied in part. (Docket 15). As a penalty for violating bankruptcy rule 1006(b)(3), Mr. Smedley is directed to pay \$50.00 to the clerk of court which the clerk is to apply to pay the balance of the case filing fee.

Date: 1 October 2003


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Mr. Casey Shandor

By: Joyce L. Gordon, Secretary

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