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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. 03-15805
)
GARY FEATHERSTONE,) 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 did not comply with the statute governing bankruptcy petition preparers, specifically failing to (1) print his name as the petition preparer; and (2) file a disclosure of compensation. The United States trustee also asks that Mr. Smedley be fined for collecting his own fee before the debtor paid the court filing fee in violation of bankruptcy rule 1006(b)(3). (Docket 8). Mr. Smedley opposes the motion.¹ (Docket 10, 15). The court held an evidentiary hearing on September 29, 2003. Dean Wyman appeared for the UST. Mr. Smedley appeared and represented himself. The debtor and Mr. Smedley testified at the hearing. For the reasons stated below, the United States trustee's motion is granted 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

At some point in 2003, the debtor telephoned Ronald Smedley at Freshstart Bankruptcy Service and made an appointment to meet with him. At the meeting, the debtor gave his outstanding bills to Mr. Smedley and Mr. Smedley typed information into his computer based on the bills and the debtor's answers to questions such as whether he owned a home, car, or any clothing. Mr. Smedley then printed out the debtor's bankruptcy petition and related documents and gave him a copy. The debtor paid Mr. Smedley \$199.00 for this service.

Page 2 of the petition has a block titled "Signature of Non-Attorney Petition Preparer." (UST Exh. 1). The form first calls for the name of the petition preparer to be printed; the words "Freshstart Bankruptcy Service" appear on that line. At the bottom, the form requires the "Signature of Bankruptcy Petition Preparer." There are two illegible words handwritten above that line. Mr. Smedley testified² that Freshstart is one of several trade names used by PC Experts, a computer consulting service. PC Experts is a corporation owned by Mr. Smedley and six or seven other people.

The debtor filed his petition on May 5, 2003 together with an application to pay his filing fee in installments. (Docket 2, 3). There is no docket entry for a disclosure of compensation of bankruptcy petition preparer. (See absence of entry on docket, UST Exh. 2). Mr. Smedley offered several alternative explanations for its absence: (1) he did not know he had to file one; (2) he prepared it and the debtor should have filed it; and (3) it actually was filed, even though he did not offer a file-stamped copy into evidence. The court concludes based on the conflicting

² Mr. Smedley answered some of the UST's questions and invoked the Fifth Amendment to the United States Constitution in response to others.

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explanations offered and a review of the docket that Mr. Smedley did not file a disclosure of compensation in this case.

DISCUSSION

The UST asks that Mr. Smedley be required to: (1) pay a \$500.00 penalty because he failed to comply with bankruptcy code § 110(b)(1); and (2) refund his preparation fee to the debtor because he violated bankruptcy code § 110(h)(1) and bankruptcy rule 1006(b)(3). Mr. Smedley opposes this request.

11 U.S.C. § 110(b)

Under bankruptcy code § 110(b)(1):

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

11 U.S.C. § 110(b)(1). A “bankruptcy petition preparer” [is] a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing[.]” 11 U.S.C. § 110(a)(1). A “document for filing” includes a bankruptcy petition. *See* 11 U.S.C. § 110(a)(2). Mr. Smedley, who is not an attorney and does not work for one, prepared the debtor’s petition and received compensation. He is, therefore, a petition preparer within the meaning of these sections. Mr. Smedley did not print his name on the petition. He did not even sign it legibly. Consequently, he violated § 110(b)(1).

Mr. Smedley appears to argue that he was working for Freshstart when he prepared the petition and that he met the code requirements by printing the name and address of Freshstart. Regardless of Freshstart’s role in this matter, Mr. Smedley personally served as a petition preparer in this case. As such, he was required to sign the petition and provide his printed name

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and address. *See In re Brokenbrough*, 197 B.R. 839, 842 (Bankr. S.D. Ohio 1996) (holding that both a company and its agent were petition preparers within the meaning of § 110).

Section § 110(b)(2) provides that:

- (2) 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(b)(2). The UST asks that the maximum fine be imposed. Mr. Smedley has not offered anything specific in opposition to establish reasonable cause. Given the number of cases in which the court has fined Mr. Smedley, the court concludes that a \$10.00 fine is sufficient under the circumstances to make the point that a petition preparer must carefully comply with the bankruptcy code.

11 U.S.C. § 110(h)

Section 110(h) imposes another obligation on a bankruptcy petition preparer: the duty to file a sworn declaration disclosing his fee within 10 days after the petition is filed. 11 U.S.C. § 110(h)(1). Mr. Smedley did not file a declaration. The remedy is to disallow any fee exceeding the reasonable value of the services rendered to the debtor and order those fees turned over to the chapter 7 trustee.³ *See* 11 U.S.C. § 110(h)(2). The debtor testified that Mr. Smedley spent two hours preparing his petition, he received his discharge, and he has not been inconvenienced in this matter. Under these circumstances, the appropriate fee for Mr. Smedley's typing services is \$100.00. He is, therefore, required to disgorge and turn over to the chapter 7

³ Section 110(h)(2) then provides that the debtor "may exempt any funds so recovered [by the trustee] under section 522(b)." 11 U.S.C. § 110(h)(2).

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trustee the difference between this amount and the amount he collected (\$199.00), which is \$99.00.

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 his fee to the trustee. Mr. Smedley argues that he should not be penalized because he is entitled to be compensated.

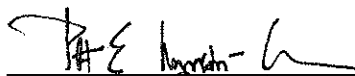
Mr. Smedley received his fee before the case filing fee was paid, which is a clear violation of the bankruptcy rule. Although rule 1006(b)(3) does not prescribe a penalty, there is case law to support requiring Mr. Smedley to disgorge his fee. *See In re Campanella*, 207 B.R. 435, 450 (Bankr. E.D. Pa. 1997); *Foulston v. Jones (In re Robinson)*, 162 B.R. 319, 326 (Bankr. D. Kan. 1993). Disgorgement of the entire fee is, however, not required. The court concludes that the determination that Mr. Smedley must disgorge \$99.00 of his fee for failing to file a compensation disclosure will also serve as a penalty for his failure to comply with rule 1006(b)(3).

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CONCLUSION

For the reasons stated, the UST's motion is granted and Mr. Smedley is directed to pay a fine in the amount of \$10.00 to the Clerk of Court for violating § 110(b)(1). Mr. Smedley is also directed to disgorge \$99.00 of his preparation fee to the trustee. A separate order will be issued reflecting this decision.

Date: 2 Oct 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Mr. Gary Featherstone
Virgil Brown, Jr., Trustee

By: Joyce L. Gordon, Secretary

Date: 10/2/03

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Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the United States trustee's motion to impose fines against Ronald Smedley and to disgorge fees is granted in part. (Docket 8). Ronald Smedley is to pay \$10.00 to the Clerk of Court for violating 11 U.S.C. § 110(b)(1). He is also to turn over \$99.00 to Virgil Brown, chapter 7 trustee, for violating 11 U.S.C. § 110(h)(1) and bankruptcy rule 1006(b)(3).

IT IS SO ORDERED.

Date: 2 October 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mr. Ronald Smedley
Dean Wyman, Esq.
Mr. Gary Featherstone
Virgil Brown, Jr., Trustee

By: Joyce L. Gordon, Secretary

Date: 10/2/03