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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
03/03/03 - 7 PM 1:42
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-16681
)
MONICA YOUNG,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

The United States trustee moved for an order directing non-attorney bankruptcy petition preparer Ronald Smedley to disgorge fees. (Docket 6). Mr. Smedley opposes this request.¹ (Docket 8, 14). The court held an evidentiary hearing on September 29, 2003. (Docket 11). Dean Wyman appeared for the UST. Mr. Smedley, who is representing himself, did not appear. The debtor Monica Young was the only witness. For the reasons stated below, the UST'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).

FACTS

The debtor Monica Young testified that she paid \$199.00 to Ronald Smedley dba Freshstart Bankruptcy Services to type her bankruptcy paperwork. In addition to the petition and schedules, he prepared an application for the debtor to pay the \$200.00 court filing fee in

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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installments. She filed the petition and the application, which the court granted. (Docket 1, 3, 4). The debtor paid her final filing fee installment on July 2, 2003.

DISCUSSION

The UST asks that Mr. Smedley be required to refund his petition preparation fee to the debtor because he violated bankruptcy rule 1006(b)(3). Mr. Smedley does not dispute the timing of his payment, but argues he is entitled to be compensated and he fully disclosed his fee.

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)). Mr. Smedley received his fee before the case filing fee was paid, which is a clear violation of the bankruptcy rule. Rule 1006(b)(3) does not prescribe a penalty. While 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) and *Foulston v. Jones (In re Robinson)*, 162 B.R. 319, 326 (Bankr. D. Kan. 1993), the law does not require this result. The court concludes that the purposes of the rule will be served in this case by requiring Mr. Smedley to pay \$99.00 to the trustee. The court arrives at this number by determining that the value of the typing services

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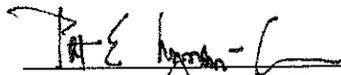
performed by Mr. Smedley for the debtor is \$100.00. See 11 U.S.C. § 110(h)(2) and 11 U.S.C.

§ 105(a).

CONCLUSION

For the reasons stated, the UST's motion is granted in part, with Ronald Smedley directed to pay \$99.00 to the chapter 7 trustee for violating bankruptcy rule 1006(b)(3). A separate order will be issued reflecting this decision.

Date: 7 Octbr 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served on: Mr. Ronald Smedley (by mail)
Dean Wyman, Esq. (court box)
Lauren Helbling, trustee (court box)
Ms. Monica Young (by mail)

By: Joyce L. Gordon, Secretary

Date: 10/7/03

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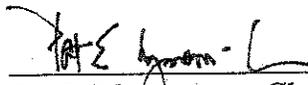
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MONICA YOUNG,) Chapter 7
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Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the United States trustee's motion for an order directing Ronald Smedley to disgorge fees is granted in part. (Docket 6). As a penalty for violating bankruptcy rule 1006(b)(3), Mr. Smedley is directed to pay \$99.00 to the chapter 7 trustee.

Date: 7 Oct 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served on: Mr. Ronald Smedley (by mail)
Dean Wyman, Esq. (court box)
Lauren Helbling, trustee (court box)
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