

THIS OPINION IS NOT INTENDED  
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
US DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND  
OCT 10 AM 8:38

In re: ) Case No. 03-13821  
)  
VERMAIL CROWELL, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

The United States trustee moves for an order imposing fines on non-attorney bankruptcy petition preparer Ronald Smedley. (Docket 11). Mr. Smedley opposes this request. (Docket 17). The court held an evidentiary hearing on October 9, 2003. Dean Wyman appeared for the UST. Mr. Smedley appeared and represented himself. He was the only witness. For the reasons stated below, the UST's motion is denied.

**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 AND DISCUSSION**

**I.**

The debtor Vermail Crowell paid \$199.00 to Ronald Smedley dba Freshstart Bankruptcy Services to type her bankruptcy paperwork. As part of this effort, Mr. Smedley typed a statement of financial affairs which states that the debtor had not paid any money to anyone to prepare a bankruptcy petition within one year before the case was filed. (UST Ex. 2 ¶ 9). The debtor filed her case on March 28, 2003 at which time she paid \$75.00 of the filing fee and asked to pay the

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balance in installments. 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. (UST Ex. 6). Additional factual issues are discussed below.

**II.**

The UST asks that Mr. Smedley be fined for two reasons: (1) he incorrectly filled out paragraph 9 of the statement of affairs; and (2) he violated 11 U.S.C. § 110(g)(1) by accepting court filing fees from the debtor. Mr. Smedley testified that the mistake in the statement of affairs was corrected when he filed his compensation disclosure. (UST Ex. 6). He denies accepting any court filing fees from the debtor.

**III.**

Bankruptcy Code § 110(g) states that a bankruptcy petition preparer shall not receive any payment from a debtor for the court filing fees. 11 U.S.C. § 110(g). In arguing that Mr. Smedley violated this section, the UST relies on a March 17, 2003 receipt given to the debtor by Mr. Smedley for \$75.00 “for payment of petition file chg.” The receipt also says: “amount due \$75.00, amount paid zero, balance \$75.00.” (UST Ex. 4-1). The UST argues that the circumstantial evidence proves that the \$75.00 represents money accepted by Mr. Smedley for the court filing fee. The court disagrees. The information on the receipt is inconclusive and inconsistent and the amount reflected does not match the amount paid as the first installment of the filing fee. The debtor might have been able to shed some light on this, but she did not testify. The evidence presented was insufficient to prove that Mr. Smedley accepted \$75.00 from the debtor for the court fee.

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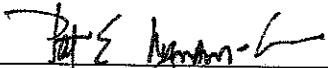
IV.

Mr. Smedley incorrectly filled out paragraph 9 of the statement of affairs. While Mr. Smedley erred in typing this part of the statement, he did file an accurate compensation disclosure after the petition was filed. The bankruptcy code does not mandate a penalty for such an error and the court finds under the circumstances that it is not necessary to impose a fine in order to impress upon Mr. Smedley the importance of providing accurate typing services in the future.

CONCLUSION

For the reasons stated, the UST's motion is denied. A separate order will be issued reflecting this decision.

Date: 10 Oct 2003

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served on: Mr. Ronald Smedley (by mail)  
Dean Wyman, Esq. (court box)  
Ms. Vermail Crowell (by mail)

By: Joyce L. Gordon Secretary

Date: 10/16/03

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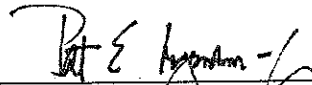
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In re: ) Case No. 03-13821  
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VERMAIL CROWELL, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**  
)

For the reasons stated in the memorandum of opinion filed this same date, the United States trustee's motion to impose fines upon Ronald Smedley is denied. (Docket 11).

IT IS SO ORDERED.

Date: 10 Oct 2003

  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Dean Wyman, Esq.  
Mr. Ronald Smedley  
Ms. Yermail Crowell

By: Joyce L. Gordon, Secretary  
Date: 10/10/03