

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 02-33802
)
Keith E. Gerber) Chapter 7
Patty J. Gerber,)
)
Debtors.) JUDGE MARY ANN WHIPPLE

**MEMORANDUM OF DECISION REGARDING MOTION TO REVIEW FEES OF
BANKRUPTCY PETITION PREPARER AND IMPOSE FINES AGAINST PREPARER**

This matter is before the court on a Motion of the United States Trustee to Review Fees of Petition Preparer, Require Petition Preparer to Refund Excessive Fees and Impose Fines Against Preparer (“Motion”). [Doc. # 8]. The Motion seeks an order directing former bankruptcy petition preparer Don Harris¹ (“Harris”) to disgorge the fee he charged in this case, arguing that the fee was excessive, and to fine Harris for a violation of 11 U.S.C. § 110(g). Harris filed a response wherein he requests that sanctions be imposed against the United States Trustee (“UST”) under Fed. R. Bankr. P. 9011(b) [Doc. # 11] and the UST filed a response to that request [Doc. # 21].

The UST filed a nearly identical motion against Harris in another case in this court, *In re Motley*, Case No. 02-33803. The court held a joint evidentiary hearing on the motions; however, separate orders will be entered in each case.

This court has jurisdiction over this Chapter 7 bankruptcy case under 28 U.S.C. §§ 1334 and 157 and the general order of reference entered in this district. The Motion is a contested matter and a core proceeding that this court may hear and determine under 28 U.S.C. § 157(b)(2)(A). This Memorandum of Decision constitutes the court’s findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, made applicable to this contested matter by Fed. R. Bankr. P. 9014 and 7052. Regardless of whether or not specifically referred to in this decision, the court has examined the submitted materials, weighed the

¹ Harris has since passed a bar examination and has satisfied the requirements for admission to practice law in this court.

credibility of the witnesses, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the

Motion will be granted in part and denied in part and Harris' request for sanctions will be denied.

FINDINGS OF FACT

Harris, as well as Keith and Patty Gerber, Debtors in this case, testified at the hearing. Debtors filed a joint Chapter 7 petition on June 7, 2002. Before filing, they made an appointment with Harris after seeing his ad in the yellow pages of the telephone book. Although the ad did not so state, *see* Preparer's Ex. 1, Debtors were aware that Harris was not an attorney. On the advice of a friend, they were seeking a bankruptcy petition preparer in order to reduce the fees they would pay in order to file for bankruptcy relief.

After the initial telephone call, Harris sent Debtors a letter setting forth the information they needed to bring with them to their first appointment, as well as a list of exemptions available in Ohio. Debtors met with Harris in his Sandusky, Ohio, office during the last week of May, 2002, for approximately one-half hour, at which time they provided the information necessary to complete their petition. They met with Harris a second time, again for approximately one-half hour, on June 4, 2002. At that time, they reviewed and signed the petition that Harris had typed and paid Harris his preparer's fee of \$350.

They also brought with them to the second appointment a \$200 money order made payable to the Bankruptcy Clerk of Court. Harris testified that it was his practice at that time not to handle the filing fee and to have the debtors themselves attach the money order to the petition, to provide the debtor with an addressed envelope, and to instruct them that they have the choice of either sending it to the court by Fed Ex, courier, or U.S. mail. He provided a box in his office for them to place the envelope for Fed Ex or courier pick-up. Although Patty Gerber testified that she did not personally mail the petition and filing fee, her recollection was not clear and she did not recall whether Harris had instructed her in the manner that he testified. Ultimately, both Keith and Patty Gerber testified that they were satisfied with the results of their bankruptcy filing and discharge.

In support of his fees, Harris offered additional evidence and testimony that the average cost of typing services in his area ranges between \$7 and \$10 per page. [Preparer's Ex. 11]. He also offered

evidence of the cost of his overhead which totals \$6,780 per month or \$81,360 per year.

LAW AND ANALYSIS

Section 110 of the Bankruptcy Code provides a mechanism for court oversight of bankruptcy petition preparers in an attempt to “address the growing problem of bankruptcy [petition] preparers

who abuse the system in the course of preparing documents for the debtors to file.” *In re Alexander*, 284 B.R. 626, 630 (Bankr. N.D. Ohio 2002) (quoting 2 Lawrence P. King, *Collier on Bankruptcy* ¶ 110.LH (15th ed. 2001)). There is no dispute that, at the time Debtors’ petition was prepared, Harris was a non-attorney bankruptcy petition preparer as defined in 11 U.S.C. § 110(a)(1).² With respect to bankruptcy petition preparers’ fees, § 110 authorizes the court to “disallow and order the immediate turnover to the bankruptcy trustee of any fee . . . found to be in excess of the value of services rendered for the documents prepared.” 11 U.S.C. § 110(h)(2). Section 110(h)(2) also provides that an individual debtor may, under 11 U.S.C. § 522(b), exempt any funds so recovered. “[T]he person seeking fees has the burden of establishing that he or she is entitled to them once a question regarding their reasonableness has been raised.” *Alexander*, 284 B.R. at 634 (quoting *In re Kathy Froehlich*, 23 Fed. Appx. 572, 574, 2001 WL 1530594 (7th Cir. 2001)).

A. Turnover of Excessive Fees under 11 U.S.C. § 110(h)(2)

This court addressed the reasonableness of fees charged by Harris in two previous reported cases, *see Alexander*, 284 B.R. 626; *In re Haney*, 284 B.R. 841 (Bankr. N.D. Ohio 2002). In those cases, the court concluded that such determinations must be made on a case by case basis, *see Alexander*, 284 B.R. at 636, *Haney*, 284 B.R. 852. In *Alexander* and *Haney*, the court considered, as a starting point, the services that a bankruptcy petition preparer is legally permitted to provide. The court concluded that, given the Ohio Supreme Court’s expansive definition of what constitutes the unauthorized practice of law, such services are “limited to providing forms, providing limited information such as court location and filing fees, typing documents from information provided by debtors, compiling them in proper order and providing

² “Bankruptcy petition preparer” is defined to mean “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). “Document for filing” means “a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.” 11 U.S.C. § 110(a)(2).

duplication services.” *Alexander*, 284 B.R. at 635; *Haney*, 284 B.R. at 851. After considering, among other things, the range of fees (\$450 - \$925) charged by attorneys representing debtors in Chapter 7 cases in this court and the fact that such fees include significant services that a petition preparer cannot provide under Ohio law, such as counseling, legal strategy and analysis, exemption analysis and selection, contact with creditors and with the trustee, and appearance at the first meeting of creditors, the court found that the maximum

value of the permitted services provided by Harris was \$200. In both *Alexander* and *Haney*, the schedules and statement of affairs showed the cases to be “the essence of routine,” as debtors had no real property, limited personal property, and debts that were not unusual in kind or number, and Harris offered no evidence supporting a fee greater than \$200. *Alexander*, 284 B.R. at 637; *Haney*, 284 B.R. at 853.

Similarly, in this case, Debtors’ schedules and statement of affairs reveal nothing out of the ordinary. In addition to their home and a \$20,000 pension plan, Debtors report limited assets and debts that, like *Alexander* and *Haney*, are not unusual in kind or number. In support of his \$350 fee, Harris offered evidence that the average cost of typing services ranges between \$7 and \$10 per page and Debtors’ petition consisted of 25 pages. As Harris testified that he provided no service other than alphabetizing creditors and inserting the information supplied by Debtors on the forms as instructed by Debtors, and assuming Harris typed 25 pages, evidence of the cost of typing services might support a fee of between \$175 and \$250. But a number of the pages of the petition required nothing more than inserting check marks or other minimal typing. The court does not find this evidence supports a fee greater than \$200.

Harris also offered evidence of his overhead costs of \$81,360 per year. Included in these costs are the costs of his legal education. [See Preparer’s Ex. 12]. But at the time he prepared Debtor’s petition, he was not admitted to the practice of law, thus precluding him from offering any legal services to Debtors. Charging Debtors for the cost of his legal education while not providing any legal services cannot serve as the basis for fees in excess of the maximum fee for a petition that is “the essence of routine.” In any event, the court finds that Harris’ overhead expenses are irrelevant and do not support a finding that the value of the actual service provided by him to Debtors exceeds \$200. Section 110 is essentially a consumer protection statute. *Scott v. United States Trustee (In re Doser)*, 292 B.R. 652, 656 (D. Idaho 2003); *In re Gutierrez*, 248 B.R. 287, 297 (Bankr. W.D. Tex. 2000). The fee standard of § 110(h) focuses on

the nature and value of the typing services to debtors, not on the needs and overhead of the petition preparer in providing such services.

To the extent that he also argues that his fee should be found reasonable since he has collected similar fees in other bankruptcy cases that have not been challenged by the UST, his argument has no merit. The facts and record in those cases are not before the court and cannot provide a basis upon which the court can make a determination in this case. *See Alexander*, 284 B.R. at 636 (rejecting a similar argument).

In light of Debtors' satisfaction with Harris' services and the value they received for such services (i.e. the petition and schedules were complete and apparently accurate and Debtors received a discharge), and finding no evidence in the record supporting a higher fee, the court finds that the value of the services rendered by Harris to Debtors is \$200.

B. Handling of Bankruptcy Filing Fee under 11 U.S.C. § 110(g)

Section 110(g) provides as follows:

(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.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

11 U.S.C. § 110(g). The UST has the burden of proving a violation of this section. *United States Trustee v. Costello (In re Rankin)*, 320 B.R. 171, 186-87 (Bankr. D. Mont. 2005).

In *Haney* and *Alexander*, this court found that Harris' acceptance of a money order payable to the clerk of court for the filing fee and transmittal of the debtor's petition along with the filing fee to the bankruptcy court violated § 110(g). Harris testified, however, that since the hearing in *Haney* and *Alexander*, he changed his practice and no longer takes possession of the filing fee. Rather, he instructs debtors to attach the money order to their petition and further instructs them regarding their choices in methods of submitting the petition and filing fee to the bankruptcy court. According to Harris, it is Debtors who control placing the petition and fee in the place of their choosing for submission to the court and he only supplies the envelope to do so. Keith Gerber did not testify on this issue and Patty Gerber's memory on the issue was unclear. On this evidence, the court finds that the UST has not met his burden of proving a § 110(g) violation.

Finally, the court finds the UST's motion was based on factual contentions "likely to have evidentiary support after a reasonable opportunity for further investigation" and was presented for the purpose intended under § 110 - to protect debtors from any abuses by bankruptcy petition preparers. Fed. R. Bankr. R. 9011(b). Thus, Harris' request for sanctions will be denied.

CONCLUSION

Based on the foregoing reasons and authorities, the Motion will be granted in part and denied in part and Harris' request for sanctions will be denied. The court will order Harris to turnover any fees collected from Debtors in this case in excess of \$200. The fees must be turned over to the

Chapter 7 panel trustee John N. Graham, with Debtors then being given time to claim an exemption in the amount turned over. A separate judgment and order in accordance with this Memorandum of Decision will be entered by the clerk.

Mary Ann Whipple
United States Bankruptcy Judge