

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
ERIC E. RICHARD and * CASE NUMBER 06-40078
ESSIE D. RICHARD, *
* CHAPTER 7
*
Debtors. * HONORABLE KAY WOODS
*

*
IN RE: *
* CASE NUMBER 06-40080
JAMES L. BOYD and *
MARY C. BOYD, * CHAPTER 7
*
Debtors. * HONORABLE KAY WOODS
*

*
IN RE: *
* CASE NUMBER 06-40093
EZELL L. JONES, *
* CHAPTER 7
*
Debtor. * HONORABLE KAY WOODS
*

*
IN RE: *
* CASE NUMBER 06-40108
PAMELA R. BOWERS, *
* CHAPTER 7
*
Debtor. * HONORABLE KAY WOODS
*

ORDER REQUIRING PETITION PREPARER JOSEPH-MARIO SPATES
TO DISGORGE FEES AND TO PAY FINE

A hearing was held on February 23, 2006 in each of the following cases, on an Order to Appear and Show Cause ("OSC") requiring petition preparer Joseph-Mario Spates ("Mr. Spates") to appear and show cause why he should not be held in contempt for

failing to file a declaration, under penalty of perjury, disclosing any fee he received from or on behalf of each of the debtors within the twelve month period prior to filing each respective bankruptcy case: Eric E. Richard and Essie D. Richard (Case No. 06-40078); James L. Boyd and Mary C. Boyd (Case No. 06-40080); Ezell L. Jones (Case No. 06-40093); and Pamela R. Bowers (Case No. 06-40108).

Mr. Spates appeared at the February 23, 2006 hearing.

Richard, Case No. 06-40078: In the Richard case, subsequent to the issuance of the OSC, Mr. Spates filed the Disclosure of Compensation of Bankruptcy Petition Preparer ("Disclosure of Compensation") on February 14, 2006. The Disclosure of Compensation revealed that Mr. Spates had received One Hundred Seventy-Five Dollars (\$175.00) in compensation from the debtors in this case. The fee charged by Mr. Spates exceeds the presumptive maximum allowable fee that may be charged by a bankruptcy petition preparer, as set forth in General Order 05-3, dated October 31, 2005, and signed by all of the bankruptcy judges of the Northern District of Ohio. The presumptive maximum allowable fee is One Hundred Twenty-Five Dollars (\$125.00). General Order 05-3 further requires any petition preparer who wants to seek a determination that the value of the rendered services exceeds One Hundred Twenty-Five Dollars (\$125.00) must file a motion, within ten (10) days after the date of filing the petition, with the Court requesting a hearing. Mr. Spates did not file the required motion. Accordingly, the fee Mr. Spates charged and received from Eric and Essie Richard exceeds the presumptive allowable maximum fee. As a consequence, pursuant to 11 U.S.C. § 110(h)(3)(A), this Court orders Mr. Spates to disgorge the fee in excess of the presumptive maximum allowable

fee, *i.e.*, Fifty Dollars (\$50.00), and turn over Fifty Dollars (\$50.00) to the bankruptcy trustee, Richard G. Zellers, no later than ten (10) days after entry of this Order.

Boyd, Case No. 06-40080: In the Boyd case, subsequent to the issuance of the OSC, Mr. Spates filed the Disclosure of Compensation on February 16, 2006. The Disclosure of Compensation revealed that Mr. Spates had received One Hundred Twenty-Five Dollars (\$125.00) in compensation from the debtors in this case. The fee charged by Mr. Spates does not exceed the presumptive maximum allowable fee that may be charged by a bankruptcy petition preparer, as set forth in General Order 05-3, dated October 31, 2005, and signed by all of the bankruptcy judges of the Northern District of Ohio.

Jones, Case No. 06-40093: In the Jones case, subsequent to the issuance of the OSC, Mr. Spates filed the Disclosure of Compensation on February 21, 2006. The Disclosure of Compensation revealed that Mr. Spates had received One Hundred Seventy-Five Dollars (\$175.00) in compensation from the debtors in this case. The fee charged by Mr. Spates exceeds the presumptive maximum allowable fee that may be charged by a bankruptcy petition preparer, as set forth in General Order 05-3, dated October 31, 2005, and signed by all of the bankruptcy judges of the Northern District of Ohio. The presumptive maximum allowable fee is One Hundred Twenty-Five Dollars (\$125.00). General Order 05-3 further requires any petition preparer who wants to seek a determination that the value of the rendered services exceeds One Hundred Twenty-Five Dollars (\$125.00) must file a motion, within ten (10) days after the date of filing the petition, with the Court requesting a

hearing. Mr. Spates did not file the required motion. Accordingly, the fee Mr. Spates charged and received from Ezell L. Jones exceeds the presumptive allowable maximum fee. As a consequence, pursuant to 11 U.S.C. § 110(h)(3)(A), this Court orders Mr. Spates to disgorge the fee in excess of the presumptive maximum allowable fee, *i.e.*, Fifty Dollars (\$50.00), and turn over Fifty Dollars (\$50.00) to the bankruptcy trustee, Michael D. Buzulencia, no later than ten (10) days after entry of this Order.

Bowers, Case No. 06-40108: In the Bowers case, as of the hearing on the OSC, Mr. Spates had not filed the Disclosure of Compensation. The Court ordered Mr. Spates to file the Disclosure of Compensation by close of business that day (February 23, 2006) or the case would be dismissed. At 4:35 p.m., Mr. Spates filed the Disclosure of Compensation, which revealed that Mr. Spates had received One Hundred Twenty-Five Dollars (\$125.00) in compensation from the debtors in this case. The fee charged by Mr. Spates does not exceed the presumptive maximum allowable fee that may be charged by a bankruptcy petition preparer, as set forth in General Order 05-3, dated October 31, 2005, and signed by all of the bankruptcy judges of the Northern District of Ohio.

Based upon the repeated failure of Mr. Spates to file the Disclosure of Compensation, as required by 11 U.S.C. § 110(h)(2), this Court finds Mr. Spates in contempt of Court and further finds it appropriate to fine Mr. Spates for such willful and repeated failure to comply with the Bankruptcy Code. 11 U.S.C. § 110(l)(1) provides that a "bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g),

or (h) may be fined not more than \$500 for each such failure." Mr. Spates' conduct, as set forth herein, could result in a fine of Two Thousand Dollars (\$2,000.00) (four failures at the maximum fine of \$500 per failure). This Court declines to fine Mr. Spates the maximum fine at this time, but does find that a fine in the total amount of Five Hundred Dollars (\$500.00) is appropriate and so fines Mr. Spates in that amount. Mr. Spates shall pay to the Clerk of Court the sum of Five Hundred Dollars (\$500.00) no later than ten (10) days after entry of this Order.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**