FILED

2008 May 13 PM 03:06

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IT IS SO ORDERED.

Kay Woods

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
MARY JO SHUSTER,	*	
	*	**CASE NUMBER 05-45399**
Debtor.	*	
	*	
**********		
	*	
MARY JO SHUSTER,	*	
	*	**ADVERSARY NUMBER 08-4014**
Plaintiff,	*	
	*	
vs.	*	
	*	
JP MORGAN CHASE BANK, N.A.	*	
successor by merger to BANK N.A.	*	
c/o CHASE HOME FINANCE, LLC,	*	
	*	**HONORABLE KAY WOODS**
Defendant.	*	
	*	

****

ORDER ENJOINING JOSEPH-MARIO SPATES FROM
ACTING AS A PETITION PREPARER FOR ONE YEAR

****

The matter before the Court is the Court's Order for Joseph-Mario Spates to Appear and Show Cause ("Show Cause Order") issued

by the Court on April 1, 2008. The Show Cause Order required Mr. Spates to appear before this Court and show cause why he should not be found to have engaged in the unauthorized practice of law. "A bankruptcy court has the power to regulate the practice of law in cases before it." *In re Ferguson*, 326 B.R. 419, 422 (Bankr. N.D. Ohio 2005) (Non-attorney purported to be a "foreclosure negotiator;" however, the court recognized that "[t]he overwhelming majority of reported cases dealing with the unauthorized practice of law in the bankruptcy context . . . [seek] to sanction bankruptcy petition preparers for the unauthorized practice of law."). In determining whether Mr. Spates engaged in the unauthorized practice of law, the Court examines whether Mr. Spates's conduct violated Ohio's laws governing the practice of law. *Id*. at 422-23 ("In determining what amounts to the unauthorized practice of law, bankruptcy courts turn to the laws of the locus state.").

The Court held a hearing on the Show Cause Order on April 24, 2008 ("Hearing"), at which Mr. Spates appeared. Mr. Spates answered questions from the Court and read a statement into the record. Thereafter, this Court took the matter under advisement. For the reasons set forth below, this Court hereby enjoins Mr. Spates from acting as a Petition Preparer for a period of one (1) year in any court in the Northern District of Ohio.

I. BACKGROUND FACTS

The Court sets forth the following facts as background. Debtor Mary Jo Schuster ("Debtor"), by and through her attorney David

Engler, Esq., filed a voluntary chapter 7 petition on September 8, 2005. Debtor scheduled "Chase" as the holder of the first mortgage on her residence, with a secured claim in the amount of $45,916.00 (Schedule D to Petition). At no time did Debtor amend her bankruptcy schedules. The Court issued Order of Discharge on December 7, 2005. Final Decree issued on December 29, 2005, followed by the closing of Debtor's case.

Nearly two years later, on December 21, 2007, Debtor filed, *pro se*, Motion to Reopen Chapter 7 Case. After a hearing on January 24, 2008, the Court granted Debtor's motion, conditioned upon payment of the fee to reopen the case. Upon paying the appropriate fee, the case was reopened.

On January 25, 2008, Debtor filed Complaint to Determine Dischargeability of Unsecured Creditor Pursuant to Rule 4007(b) Fed. R. Bankr. Proc. [sic]; and 11 U.S.C. 523 [sic] ("Complaint"), which commenced Adversary Proceeding 08-4014 ("Adversary Proceeding"), a copy of which is attached to and incorporated as part of this Order as Attachment A. The Complaint purportedly sought to "determine the dischargeability of an unsecured equity line of credit debt[,]" and was filed "pursuant to 11 U.S.C. Section 523(a)(8), 42 U.S.C. Section 929(f)(g) and Rule 7001 of the Federal Rules of Bankruptcy Procedure." (Complaint ¶¶ 2 and 3.) Neither of these statutory citations are relevant to Debtor's allegations that the claim of Defendant JP Morgan Chase is not secured. Section 523(a)(8) of Title 11 deals exclusively with the dischargeability of student

loans. There is no section 929 of Title 42 of the United States Code.

Debtor filed Motion for Default Judgment ("Motion for Default") in the Adversary Proceeding on February 26, 2008. The Court held a hearing on the Motion for Default on March 27, 2008 ("Default Hearing"), at which Debtor appeared. In answer to questioning from the Court about the asserted statutory bases for the Complaint, Debtor stated that a "paralegal" she identified as "Mr. Spates" had told her the citations to use and that she had never read either Code section in the Complaint. Joseph-Mario Spates, who is known to the Court as a petition preparer, was in the courtroom, sitting with Debtor prior to the case being called. Debtor pointed to Mr. Spates when she identified the "paralegal" who had helped her prepare the Complaint.

Based on Debtor's representation concerning Mr. Spates's involvement in drafting the Complaint, the Court issued the Show Cause Order.

II. MR. SPATES'S RESPONSE

At the Hearing, Mr. Spates stated that, although he graduated from the University of Connecticut Law School, he is not admitted to the bar in any state and that he has been a paralegal for approximately ten years. As a consequence, there is no question that Mr. Spates is not a licensed attorney and, thus, is prohibited from engaging in the practice of law in Ohio. "No person may practice law in this state who has not been admitted to the bar by

order of the Supreme Court of Ohio in accordance with its rules and who is not in good standing at the bar." *In re Unauthorized Practice of Law in Cuyahoga County* (*In re Brown*), 192 N.E.2d 54, 56-57 (Ohio 1963).

Mr. Spates read a statement into the record to the effect that: (i) Debtor contacted him to ask about the adequacy of her prior bankruptcy counsel; (ii) he told Debtor to obtain the advice of an attorney; (iii) he "listened" to Debtor and found some "formats" that he gave to her from the court website; and (iv) Debtor used the "two forms" he had located to draft her motion and Complaint. Mr. Spates acknowledged that he was with Debtor in the courtroom at the Default Hearing, but only at her request because she was nervous. According to Mr. Spates, he never advised or solicited Debtor. He further pointed out that his name did not appear on Debtor's Complaint. In addition, Mr. Spates expressly disavowed being involved in typing Debtor's Complaint.

Moreover, Mr. Spates denied telling Debtor that she had a cause of action. He said that he told her if she had a cause of action, she needed to get an attorney.

Mr. Spates insisted that: (i) he did not provide any legal advice to Debtor, and (ii) he had received "nothing" from Debtor. At the Default Hearing, Debtor told the Court that Mr. Spates was her paralegal and that he had supplied her with the legal citations in the Complaint. Despite Mr. Spates's contention that he merely found some "formats" for Debtor and "gave her the format he got off

the court website," he refused to directly answer the Court about whether he had provided Debtor with the case citations.

Mr. Spates acknowledged that this is not the first time he has been in this Court concerning the unauthorized practice of law. On April 14, 2006 ("Prior Injunction Order"), this Court enjoined Mr. Spates from acting in the capacity as a petition preparer for a one-year period based upon his admitted unauthorized practice of law in several chapter 7 cases. The Prior Injunction Order was entered in the following cases: 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 claimed, however, that he provides no legal advice to any of his current clients. In that regard Mr. Spates expressly disavowed any knowledge of a motion for sanctions filed by one of his clients, Davida Daniels, that was scheduled to be heard the same day as the Hearing. Copies of the motions in the Daniels case are attached hereto and incorporated herein collectively as Attachment B.

III. DEBTOR'S POSITION

Debtor gave somewhat contradictory statements about the services Mr. Spates provided to her. At the Default Hearing, Debtor stated that Mr. Spates had provided her with case citations in the Complaint; at the Hearing, Debtor asserted that she prepared the

Complaint and Amended Complaint[1] entirely on her own. However, Debtor was equivocal on this subject. Debtor explained that when she asked Mr. Spates to point her in the right direction so she could proceed *pro se,* he pointed out a format on the website that dealt with student loans, which she used without reading in preparing the Complaint. At the Default Hearing, Debtor admitted that she had never read any Bankruptcy Code sections and had no idea upon what her Complaint was based. Despite asserting that she has limited access to a computer, Debtor contended at the Hearing that she was able to read and research the Code and the Rules from the Court's website to prepare the Amended Complaint. Although Debtor stated that she had prepared the Amended Complaint based upon her own research, she seemed unfamiliar with its content.

Debtor acknowledged that she had not paid any money to Mr. Spates for whatever assistance he provided.

IV. CREDIBILITY

On April 14, 2008, Mr. Spates filed Motion for [sic] Reschedule of Order to Appear and Show Cause Hearing ("Mr. Spates's Motion"), a copy of which is attached hereto and incorporated herein as Attachment C. A review of Debtor's Complaint (Attachment A), the Amended Complaint (attached hereto and incorporated herein as Attachment D), and Mr. Spates's Motion, all reveal that they are set up exactly the same – same caption, signature lines, language in the

[1]In accordance with the Court's Order dated March 27, 2008, Debtor filed Amended Complaint to Determine Dischargeability of Unsecured Mortgage Debt ("Amended Complaint") on April 2, 2008.

certificate of service – and utilize the same type-face. Mr. Spates urges this Court to believe that he was not at all involved with drafting or typing Debtor's complaints, but the physical evidence indicates otherwise.

In addition, a review of the pleadings that led to the Prior Injunction Order demonstrate that they look remarkably like the Complaint, Amended Complaint, and Mr. Spates's Motion in the instant case. Copies of those pleadings are attached hereto and incorporated herein collectively as Attachment E.

Moreover, subsequent to the Hearing, this Court became aware that two *pro se* debtors who had utilized the services of Mr. Spates as a petition preparer (*i.e.*, Davida Daniels (Case No. 09-40353), referenced above, and Eddie Franklin (Case No. 08-40670)) each filed a General Power of Attorney (within five days of each other). Both of these debtors utilized the power of attorney form for a creditor/claimant rather than a power of attorney form appropriate for a debtor. Copies of these power of attorney forms are attached hereto and incorporated herein collectively as Attachment F. The typed information on both of the powers of attorney are identical in capitalization and type-face to Exhibits A, C and D.

Each of the *pro se* debtors referenced herein (Shuster, Daniels and Franklin) filed incorrect, inadequate and just plain wrong documents. In addition to entering two orders in the instant case – one denying the Motion for Default and another dismissing the Adversary Proceeding, the Court had to issue three other orders (i)

one denying the Daniels's motion for sanctions, and (ii) two separate orders striking the powers of attorney filed by Daniels and Franklin. To the extent each of these debtors received legal advice from Mr. Spates, such advice led to poor and improper filings that did not advance their cases.

As a petition preparer, Mr. Spates is limited to providing bankruptcy forms and typing information onto those forms when a bankruptcy petition is filed. He is not authorized to provide any legal advice. He cannot be involved in the filing of an adversary complaint. This Court finds that providing "samples" or "formats" for a debtor to use in drafting a complaint constitutes providing legal advice. *See In re Ferguson*, 326 B.R. at 323 ("The Ohio Supreme Court has . . . defined the practice of law expansively. The practice of law in Ohio is not limited to the conduct of cases in court, but embraces 'the preparation of pleadings and other papers incident to actions,' 'the management of such actions,' and 'in general all advice to clients and all action taken for them in matters connected with the law.'"). *See also Geauga County Bar Ass'n v. Canfield*, 748 N.E.2d 23 (Ohio 2001) (copying a form contract produced by a legal printing company constitutes the unauthorized practice of law even when no compensation is involved).

Although much of the evidence concerning Mr. Spates's unauthorized practice of law is circumstantial, this Court finds that Mr. Spates's representations that he did not engage in the unauthorized practice of law are self-serving and not credible.

Debtor's equivocal attempt to change her statement from the Default Hearing concerning Mr. Spates's involvement with the Complaint also is not credible. The fact that Mr. Spates did not receive any compensation for such services does not change the fact that he rendered legal services without a license. *In re Brown*, 192 N.E.2d at 57 ("[N]o one, other than an attorney, may appear in court as a representative of another, whether or not such representative is to receive a fee for his services.").

In *Geauga County Bar Ass'n*, the respondent, who had previously voluntarily resigned his office as an attorney and counselor at law, stipulated that he had filled out a form contract for the sale of real estate on behalf of someone other than himself, but received no money for doing so. *Geauga County Bar Ass'n v. Canfield*, 748 N.E.2d at 24. The Supreme Court of Ohio held, "Respondent's argument that he merely copied a form contract produced by a legal printing company and that he received no compensation for his actions do[es] not remove his conduct from the practice of law. The fact that he received no remuneration for his actions is irrelevant. Respondent's conduct was the unauthorized practice of law." *Id*.

Accordingly, this Court finds that Mr. Spates has engaged in the unauthorized practice of law in connection with the instant case. Based on the Court's findings, and the authority in 11 U.S.C. § 110(j)(3), this Court hereby enjoins Mr. Spates from engaging in any activity as a petition preparer within the Northern District of Ohio for a period of one year (*i.e.*, until May 13, 2009). The Court

will also forward a copy of this Order to the Supreme Court of Ohio for such further action as the Court may deem appropriate.

# # #

ATTACHMENT A

FILED

2008 Jan 25 PM 01:45
U.S. BANKRUPTCY COURT
CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

2008 JAN 25 AM 11:34
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALL DOCUMENTS REGARDING THIS MATTER MUST BE IDENTIFIED BY BOTH ADVERSARY AND BANKRUPTCY CASE NUMBERS.

IN Re:	**CASE NO. 05-45399**
MARY JO SHUSTER	**CHAPTER 7**
	JUDGE KAY WOODS
DEBTOR	**ADVERSARY PROC. NO.** 08 4014
MARY JO SHUSTER **49 SOUTH RICHVIEW AVENUE** **YOUNGSTOWN, OH 44509**	**COMPLAINT TO DETERMINE DISCHARGEABILITY OF UNSECURED CREDITOR PURSUANT TO RULE 4007(b) FED. R. BANK. PROC.; AND 11 U.S.C. 523**
PLAINTIFF	
VS	
JP MORGAN CHASE BANK, N.A. SUCCESSOR BY MERGER TO BANK N.A. c/o CHASE HOME FINANCE, LLC **8333 RIDGEPOINT DRIVE** **IRVING, TX 75063**	**EXHIBITS A-E** **AMENDED SCHEDULES D AND F**
DEFENDANT	

Plaintiff, Mary Jo Shuster respectfully states for her complaint pursuant to Rule 4007 (a) (b) of the Federal Rules of Bankruptcy Procedure as follows:

(1) This is a core proceeding over which this Court has jurisdiction under Title 28 U.S.C. Section 157 (b).

(2) This is an adversary proceeding to determine the dischargeability of an unsecured equity line of credit debt.

(3) This complaint is brought pursuant to 11 U.S.C. Section 523 (a) (8), 42 U.S.C. Section 929 (f)(g) and Rule 7001 of the Federal Rule of Bankruptcy Procedure.

(4) That this court also has jurisdiction pursuant to 28 U.S.C. 1334, Rules 5005, 7001 (6) and 7002 of the Federal Rules of Bankruptcy Procedure.

(5) That Plaintiff, a resident of Mahoning County, Ohio is an individual and the debtor by virtue of the filing of a petition under Chapter 7, filed pursuant to Title 11 of the United States Code on September 8, 2005, styled Mary Jo Shuster, and case No. 05-45399 in the U.S. Bankruptcy Court, North District, Eastern Division. The Case has been discharged as of December 7, 2005. It was previously assigned to Judge Kay Woods

(6) On February 20, 1997, Barbara V. Bosch, deeded ownership of 49 South Richview, Youngstown, OH 44509 to Plaintiff for 39,900 dollars.

(7) On February 26, 1997, Plaintiff and First Investment Company agreed to terms and provisions of an Open-End Mortgage Agreement for the principal sum of 40,350. First mortgage lien was later reassigned to Leader Mortgage Company. Subsequently, thereafter Defendant *US Bank N.A. became first mortgage lien successor to Leader Mortgage Company.* (Exhibit A)

(8) On October 24, 2001, Plaintiff executed **unsecured equity line of credit *agreement for 46,500 dollars*** through Bank One, which at a later date, merged to JP Morgan Chase Bank. (Exhibit B)

(9) In September 8, 2005 filed for Chapter 7 bankruptcy relief through retained bankruptcy attorney, David L. Engler, 100 DeBartolo Place, Boardman, OH 44512. The Defendant was listed separately in Debtor's Statement of Intention; and Debtor's Verification of Matrix list. (Exhibits C, D)

(10) That Defendant was given notice of the commencement of the Chapter 7 case by notice mailed September, 2005. Defendant failed to object to the dischargeability of the unsecured debt at that time.

(11) Defendant, JP Morgan Chase Bank was mistakenly listed in Schedule D by bankruptcy attorney as **a secured first mortgage lien holder**. (Exhibit E)

(12) That Defendant, JP Morgan Chase Bank acknowledged in Equity Line of Credit Agreement Existing Indebtedness provision that the "**the lien of this Mortgage securing the indebtedness may be secondary and inferior to the lien securing payment of an existing obligation".** See: Exhibit B at Pg. 3.

WHEREFORE, Plaintiff respectfully request that Defendant's unsecured equity line of credit debt be discharged.

Respectfully submitted,

Mary Jo Shuster
49 South Richview Avenue
Youngstown, OH 44509

PROOF OF SERVICE

Copy of the foregoing Adversary Complaint w/attached Exhibits is sent via certified U.S. mail, postage prepaid this 24th day January 2008 to:

Mark Beatrice, Trustee
Commerce Building
Atrium Level 2
201 East Commerce Street
Youngstown, OH 44503

JP Morgan Chase Bank, N.A
Successor By Merger To Bank
N.A. c/o Chase Home Finance, LLC
8333 Ridgepoint Drive
Irving, TX 75063

Mary Jo Shuster

ATTACHMENT B

FILED
U.S. BANKRUPTCY COURT
2008 MAR 24 PM 1:23
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE :	:	**CASE NO. 08-40353**
DAVIDA DANIELS	:	**CHAPTER 7**
DEBTOR	:	**JUDGE KAY WOODS**

MOTION FOR SANCTION AGAINST CREDITOR FOR VIOLATION OF BANKRUPTCY CODE, SECTION 362

Debtor herein, respectfully request punitive sanction against Chapter 7 listed unsecured Creditor, Rent-A-Center, hereinafter "The Creditor" for violation of Bankruptcy Code Section 362, which prohibits Creditor from contracting the Debtor by telephone, mail or otherwise to demand payment of debt. Debtor represents as follows.

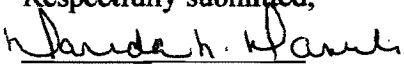
1. The Creditor has been notified of the filing of Chapter 7 Petition by the Court, but has repeatedly telephone Debtor with harassment and threatening telephone calls regarding payment of delinquent account.

2. The Creditor has stated that their legal counsel has advised them that their debt falls within exception to automatic stay under Section 362 (b) (1); and that their pursuit of this type of delinquent debt owed by Debtor is well within the established legal standard.

3. The Creditor steadfastly refuses to abide by the dictums of Bankruptcy Code Section 362.

WHEREFORE, Debtor respectfully request the Court for punitive sanctions against Creditor, Rent-A-Center for violation of Bankruptcy Code Section 362, and any other relief the Court finds just and equitable.

Respectfully submitted,



Davida Daniels
743 East Lucius Avenue
Youngstown, OH 44502

PROOF OF SERVICE

Service of the foregoing Motion for Sanction is sent regular U.S. Mail; postage prepaid this 24th day of March 2008 to:

Rent-A-Center
2625 Market Street
Youngstown, OH 44507-7556

Davida Daniels

RENT-A-CENTER, INC.
2625 Market St
Youngstown, OH 44507-1440
330/782-7556

03/17/08

DAVIDA L DANIELS
743 E Lucius Ave
Youngstown, OH 44502-2435

Dear DAVIDA L DANIELS,

As you are aware, your rental agreement expired on 03/03/08. 15 days have elapsed since that time, and yet you have failed to either renew your agreement with us, or make arrangements to return our merchandise to the store.

We hereby demand that you return the rented merchandise to the store immediately. We can arrange to pick up the merchandise from your home if you are unable to bring it to the store. In either event, we must hear from you within three (3) days of your receipt of this letter. Otherwise, you leave us no choice but to consider exercising our legal rights under the rental agreement and under the laws of this state.

Do not underestimate the seriousness of this situation. The decision is yours as to how this matter will be handled.

We anticipate your visit soon.

Sincerely,

Sheena

Account Manager

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

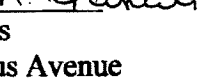
FILED
U.S. BANKRUPTCY COURT
2008 MAR 24 PM 1:23
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN RE :	:	**CASE NO. 08-40353**
	:	
DAVIDA DANIELS	:	**CHAPTER 7**
	:	
	:	
DEBTOR	:	**JUDGE KAY WOODS**
	:	

MOTION TO WAIVE FEES AND OTHER COURT COSTS IN MOTION FOR SANCTIONS

Debtor herein respectfully request the Court to waive filing fees and court costs in the above captioned Chapter 7 Case pursuant to Rule 4007 (a) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,



Davida Daniels
743 East Lucius Avenue
Youngstown, OH 44502

ATTACHMENT C

FILED
U.S. BANKRUPTCY COURT
2008 APR 14 AM 9:08
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE :	**CASE NO. 05-45399**
MARY JO SHUSTER	**JUDGE KAY WOODS**
DEBTOR	**CHAPTER 7**
	ADVERSARY PROC. NO. 08-4014
MARY JO SHUSTER **49 SOUTH RICHVIEW AVENUE** **YOUNGSTOWN, OH 44509**	
PLAINTIFF	
VS	**MOTION FOR RESCHEDULE OF ORDER TO APPEAR AND SHOW CAUSE HEARING**
JP MORGAN CHASE BANK SUCCESSOR BY MERGER TO BANK N.A. C/O CHASE HOME FINANCE, LLC **8333 RIDGEPOINT DRIVE** **IRVING, TX 75063**	
DEFENDANT	

Joseph-Mario Spates, herein respectfully request that the hearing set for April 17, 2008 at 9:30 am in Court Room on Third Floor of U.S. Bankruptcy Court, 10 East Commerce Street, Youngstown, OH 44503 regarding subject-matter, Unauthorized Practice of Law be reschedule to a future date because he is scheduled for a out-patient optical procedure at the Cleveland Clinic Cole Eye Institute on April 17, 2008.

Respectfully submitted,

Joseph-Mario Spates
6 W. Federal Plaza
Youngstown, OH 44503

PROOF OF SERVICE

Copy of the foregoing Motion to reschedule is sent regular U.S. mail; postage prepaid this 12th day of April, 2008 to:

Mary Jo Shuster
49 South Richview Avenue
Youngstown, OH 44509

Mark Beatrice, Trustee
Commerce Bldg.
Atrium Level 2
201 East Commerce Street
Youngstown, OH 44503

Joseph-Mario Spates

ATTACHMENT D

FILED
U.S. BANKRUPTCY COURT
2008 APR -2 PM 3: 32
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE :	**CASE NO. 05-45399**
MARY JO SHUSTER	**JUDGE KAY WOODS**
DEBTOR	**CHAPTER 7**
	ADVERSARY PROC. NO. 08-4014
MARY JO SHUSTER **49 SOUTH RICHVIEW AVENUE** **YOUNGSTOWN, OH 44509**	
PLAINTIFF	
VS	**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF UNSECURED MORTGAGE DEBT**
JP MORGAN CHASE BANK SUCCESSOR BY MERGER TO BANK N.A. C/O CHASE HOME FINANCE, LLC **8333 RIDGEPOINT DRIVE** **IRVING, TX 75063**	
DEFENDANT	

Plaintiff herein respectfully amends the Adversary Complaint filed herein to correct the jurisdictional deficiency and to perfect the Statement of Facts as follows.

(1) This is a core proceeding over which this Court has jurisdiction under Title 28 U.S.C., Section 157 (b) (I) and (b) (2(I).

(2) This is an adversary proceeding to determine the dischargeability of an unsecured mortgage equity debt pursuant to 28 U.S.C. Section 1334 (b).

STATEMENT OF FACTS

(3) That Plaintiff, a resident of Mahoning County, Ohio is an individual and the debtor by virtue of the filing of a petition under Chapter 7, pursuant to Title 11 of the United States Code on September 8, 2005, styled Mary Jo Shuster, and case No. 05-

45399 in the U.S. Bankruptcy Court, North District, Eastern Division. The case has been discharged as of December 7, 2005. It was previously assigned to Judge Kay Woods.

(4) On February 20, 1997, property owner, Barbara V. Bosch, deeded ownership of 49 South Richview, Youngstown, OH 44509 to Plaintiff for 39,900 dollars.

(5) On February 26, 1997, Plaintiff and First Investment Company agreed to terms and provision of First Open-End Mortgage Agreement for the principle sum of 40,350. First Mortgage lien was later reassigned to Leader Mortgage Company. Shortly thereafter, US Bank N.A. became First Mortgage lien successor to Leader Mortgage Company. Exhibit A.

(6) On October 24, 2001, Plaintiff executed Second Open-End Mortgage Agreement (unsecured equity line of credit) for 46,500 dollars from Bank One, which at a later date merger to JP Morgan Chase Bank, the Defendant in this adversary proceeding. Exhibit B.

(7) On September 8, 2005, Plaintiff filed for Chapter 7 Bankruptcy Relief with the legal representation of Attorney David L. Engler.

(8) The Defendant was listed erroneously in Schedule D as the secured 1st mortgage lien holder, and in Debtor's Intention to Reaffirm the Debt. Exhibits C and D.

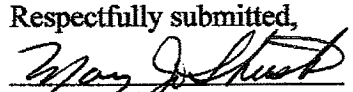
(9) Plaintiff has amended Schedules D, F and Debtor's Intention. Exhibits E, F and G.

(10) Defendant has acknowledged and admitted the fact in Complaint in Foreclosure filed under Mahoning County Court of Common Pleas Case No. 07 CV 3799, at Page (3) that "defendant Mary Jo Shuster, is immune from personal liability on said note by virtue of Bankruptcy Case No. 05-45399, United States Bankruptcy Court, Northern District of Ohio". Exhibit H.

(10) Defendant has stated in the Second Open-Ended Mortgage Equity Agreement that "the lien of this Mortgage securing the indebtedness may be secondary and inferior to the lien securing payment of an existing obligation". See, Exhibit B.

WHEREFORE, Plaintiff respectfully request that Defendant having stated in Ohio Court foreclosure proceedings that Plaintiff is immune from personal liability on mortgage equity debt as a result of bankruptcy filing in 05-45399, as such Plaintiff states mortgage debt listed in Amended Schedule F, Exhibit F should be discharged.

Respectfully submitted,



Mary Jo Shuster
49 South Richview Avenue
Youngstown, OH 44509

PROOF OF SERVICE

Copy of the foregoing Amended Adversary Complaint w/attached Exhibits and Amended Schedules is sent U.S. mail, Signature Confirmation this 2nd day of April 2008 to:

JP Morgan Chase Bank, N.A.
8333 Ridgepoint Drive
Irving, TX 75063

Mark Beatrice, Trustee
Commerce Building
Atrium Level 2
201 East Commerce Street
Youngstown, OH 44503

Mary Jo Shuster

ATTACHMENT E

FILED
U.S. BANKRUPTCY COURT
2006 MAR 10 PM 12: 16
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE :	**ERIC E. RICHARD And ESSIE D.RICHARD**	:	**CASE NO. 06-40078**
		:	
		:	**CHAPTER 7**
	DEBTORS	:	
		:	**JUDGE KAY WOODS**

DEBTOR'S OBJECTION TO TRUSTEE'S MOTION TO DISMISS UNDER 11 U.S.C. SECTION 109 (h)(1)(3)

Debtors, Eric E. Richard and Essie D. Richard, herein object to Trustee's Motion to Dismiss on grounds that bankruptcy courts in different circuits including several circuit courts of appeal have generally been divided on the issue of whether to dismiss or to strike the petition, where it is determined by the face of the petition that a debtor is ineligible for bankruptcy relief because of a failure to acquire credit counseling prior to the filing of petition. See, ***In re: Anthony J. Rios, 336 B.R. 177 (S.D.N.Y 2005); In re: Hubbard, 33 B.R. 337 (S.D. Texas 2005) and In re: Valdez, 335 B.R. 801 (S.D. Fla. 2005).*** Attached hereto, is Memorandum in support of Objection.

Respectfully submitted,

Eric E. Richard
5238 Logan Arms
Girard, OH 44420

And

Essie D. Richard
5238 Logan Arms
Girard, OH 44420

PROOF OF SERVICE

Copy of the foregoing is sent via regular U.S. mail; postage prepaid this 10th day of March to:

Derrick V. Rippy
U.S. Department of Justice
Office of the United States Trustee
Suite 441, H.M. Metzenbaum U.S. Courthouse
201 Superior Avenue
Cleveland, OH 44114

Eric E. Richard

And

Essie D. Richard

DEBTOR'S MEMORANDUM IN SUPPORT OF THE OBJECTION TO TRUSTEE'S MOTION TO DISMISS

Introduction:

The United States Trustee for the Northern District of Ohio is seeking an order from this Court to dismiss Debtors' Petition under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 11 U.S.C. Section 109 (h) (1) (3) because Debtors have failed to obtain the required credit counseling prepetition or to demonstrate "exigent circumstances" necessary for temporary waiver of credit counseling requirement.

In essence, and the strict constructionist thrust of Trustee's argument is that an individual is not eligible to be a debtor in a bankruptcy case unless, with certain exceptions, the individual has received prepetition credit counseling and budget briefing from an approved consumer credit counseling agency. The "trigger" it seems is the eligibility of the individual. Dismissal of Debtors' Petition is the sole remedy sought by the Trustee instead of having the Petition stricken. Debtors respectfully disagree and advance their substantive and meritorious objection to Trustee's Motion to dismiss.

Argument:

Debtors contend that it is axiomatic and well established in recent rulings[1] since the effective date of the newly enacted BAPCPA as congressional intent is clear that an individual must first obtain credit counseling as a prerequisite for bankruptcy relief, in order provide putative debtors with opportunity to make informed choices as to financial alternatives available, including the possibility of seeking bankruptcy protection. See, ***H.R. Rep. 109-31 (1) at 89***. However, as the Court in ***In re: Anthony J. Rios, 336 B.R. 177(S.D.N.Y 2005)*** concluded [The Court thinks that dismissal for failure to seek credit counseling achieves a result Congress intended to avoid; that is, future limitation of debtor protection under the BAPCPA. Indeed, Congress could have made **failure to seek**

[1] Although a majority of courts, without discussing the issue have either dismissed without prejudice or stricken the Petition.

credit-counseling cause for dismissal under the "revised 22 U.S.C. Section 707] (Emphasis Added).

Debtors further contend that the sole issue raised before the Court by the Trustee's MOTION is whether their failure to seek credit counseling[2] as required by 11 U.S.C. 109 (h)(1) or seek an extension of time to obtain the necessary credit counseling as set forth in Section 109 (h)(3) voids the bankruptcy filing completely, or merely renders the case subject to dismissal.

Debtors pray the Court determines that their voluntary Petition is ***void ab initio***[3]

Respectfully submitted,

Eric E. Richard

And

Essie D. Richard

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[2] The form is new. Section 727 (a)(11) and 1328 (g)(1), which was added to the Code by the BAPCPA 0f 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005, require debtor to complete an instructional course concerning personal financial management as a condition for receiving a discharge. The completed, form, when filed by the debtor, will signal the clerk that this condition has been satified.

[3] Trustee cites ***In re: William T. Cleaver, 333 B.R. 430 (S.D.Ohio 2005)*** as controlling.

U.S. BANKRUPTCY COURT
FILED
2006 MAR 28 PM 12: 38
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: ERIC E. RICHARD And ESSIE D. RICHARD	:	**CASE NO 06-40078**
DEBTORS	:	**CHAPTER 7**
	:	**JUDGE KAY WOODS**
AND	:	
IN RE: EZELL L. JONES	:	**CASE NO. 06-40093**
DEBTOR	:	**CHAPTER 7**
	:	**JUDGE KAY WOODS**
AND	:	
IN RE: JAMES L. BOYD And MARY C. BOYD	:	**CASE NO. 0640080**
DEBTOR	:	**CHAPTER 7**
	:	**JUDGE KAY WOODS**
AND	:	
IN RE: PAMELA R. BOWERS	:	**CASE NO. 06-40108**
DEBTOR	:	**CHAPTER 7**
	:	**JUDGE KAY WOODS**

PREPARER'S RESPONSE TO COURT'S SHOW CAUSE ORDER; AND UNITED STATES TRUSTEE'S ARGUMENT FOR PERMANENT ENJOINMENT AS A RESULT OF PREPARER'S ALLEGED VIOLATION OF 11 U.S.C. SECTION 110

Bankruptcy Preparer, Joseph-Mario Spates, respectfully responds to the Court's Show Cause Order; and the United States Trustee's Response, dated March 16th and March 24, 2006, respectively. Preparer strenuously objects, in particular the unsubstantiated statement of the Trustee that Preparer" had failed to comply with the provisions of a previous consent agreement tentatively entered into by both parties". It is

Preparer contention, for whatever reason, the Trustee has deliberately misled the Court in its Response. Attached hereto, is Preparer's Response.

Respectfully submitted,

Joseph-Mario Spates
2733 Market Street
Youngstown, OH 44507

PROOF OF SERVICE

Copy of foregoing Motion is sent via **regular U.S. mail,** postage prepaid this 28th day of March 2006 to:

Michael D. Buzulencia, Trustee
150 E. Market Street
Suite 300
Warren, OH 44481-1205

Richard G. Zellers, Trustee
3810 Starr Center Drive
Canfield, OH 4406

Mark Beatrice, Trustee
Atrium Level 2
Commerce Bldg.
Youngstown, OH 44503

Eric and Essie Richard
5238 Logan Arms
Girard, OH 44420

James and Mary Boyd
2786 Sierra Drive
Youngstown, OH 44511

Ezell L. Jones
3923 Helena
Youngstown, OH 44512

Pamela R. Bowers
360 West Chalmers
Youngstown, OH 445011

Joseph-Mario Spates

FILED
U.S. BANKRUPTCY COURT
2006 MAR 28 PM 12:40
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: ERIC E. RICHARD And ESSIE D. RICHARD	:	**CASE NO 06-40078**
DEBTORS	:	**CHAPTER 7**
	:	**JUDGE KAY WOODS**
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AND	:	
IN RE: PAMELA R. BOWERS	:	**CASE NO. 06-40108**
DEBTOR	:	**CHAPTER 7**
	:	**JUDGE KAY WOODS**

MOTION FOR ENLARGEMENT OF TIME

Preparer, Joseph-Mario Spates, respectfully request an extension of time in which to obtain legal counsel, in order to comply with the Court Order to appear and Show Cause; and to contest Trustee's recently filed request to enjoin Preparer from acting as a Petition Preparer in the Northern District of Ohio Bankruptcy Courts. Preparer request that the Show Cause hearing schedule for March 30, 2006 at 10:30 am be continued until April 13, 2006.

Respectfully submitted,

Joseph-Mario Spates
2733 Market Street
Youngstown, OH 44507

ATTACHMENT F

Official Form 11A
6/90

United States Bankruptcy Court

NORTHERN District Of OHIO

In re EDDIE FRANKLIN,
Debtor

Case No. 08-40670

Chapter 7

U.S. BANKRUPTCY COURT FILED
2008 APR 23 AM 9: 34
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

GENERAL POWER OF ATTORNEY

To BARBARA FRANKLIN of * 115 WEST LACEDE AVENUE, YOUNGSTOWN, OH 44507, and
_____ of * _____.

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; [*if appropriate*] to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: 4-15-08

Signed: Eddie Franklin

By Deborah A. Pegues

as NOTARY

Address: 956 Glenmont St.
Youngstown, Ohio 44510

DEBORAH A. PEGUES
Notary Public, State of Ohio
My Commission Expires 3-17-13

[*If executed by an individual*] Acknowledged before me on _____.

[*If executed on behalf of a partnership*] Acknowledged before me on _____,
by _____, who says that he [*or* she] is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on _____,
by _____, who says that he [*or* she] is _____ of the corporation named above and is authorized to execute this power of attorney in its behalf.

_____

_____
[Official character.]

* State mailing address.

STATE OF OHIO :

SS : YOUNGSTOWN

COUNTY OF MAHONING :

The foregoing Power of Attorney document was prescribed and acknowledged before me this 18th of April 2008.

Deborah A. Pegues
NOTARY PUBLIC

DEBORAH A. PEGUES
Notary Public, State of Ohio
My Commission Expires 3-17-13

Official Form 11A
6/90

United States Bankruptcy Court

FILED
U.S. BANKRUPTCY COURT
2008 APR 28 AM 9:57
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

NORTHERN District Of OHIO

In re DAVIDA Daniels,
Debtor

Case No. 08-40353

Chapter 7

GENERAL POWER OF ATTORNEY

To KE-YONNA DANIELS of * 910 CAMERON AVE., and
_____ of * _____.

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; [*if appropriate*] to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: 4-22-08

Signed: Davida A. Daniels

By Gwendolyn R. Thomas-Bonner
as NOTARY PUBLIC

GWENDOLYN R. THOMAS-BONNER
Notary Public - State of Ohio
My Commission Expires November 22, 20[illegible]

Address: C/O 1755 SHERRY ST.
YOUNGSTOWN, OH 44506

[*If executed by an individual*] Acknowledged before me on APRIL 22, 2008.

[*If executed on behalf of a partnership*] Acknowledged before me on _____,
by _____, who says that he [*or* she] is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on _____,
by _____, who says that he [*or* she] is _____ of the corporation named above and is authorized to execute this power of attorney in its behalf.

_____

_____
[Official character.]

* State mailing address.