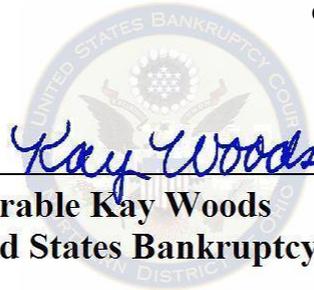


2008 May 27 PM 02:50

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

IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*
	*
MARY JO SHUSTER,	*
	*
Debtor.	*
	*
*****	*
	*
MARY JO SHUSTER,	*
	*
Plaintiff,	*
	*
vs.	*
	*
JP MORGAN CHASE BANK, N.A.	*
successor by merger to BANK N.A.	*
c/o CHASE HOME FINANCE, LLC,	*
	*
Defendant.	*
	*

CASE NUMBER 05-45399

ADVERSARY NUMBER 08-4014

HONORABLE KAY WOODS

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

The matter before the Court is Motion for Reconsideration of Court's Order to Enjoin [sic] Bankruptcy Preparer for One (1) Year

("Motion for Reconsideration") (Doc. # 29) filed by Joseph-Mario Spates ("Spates") on May 20, 2008. The Motion for Reconsideration asks the Court to "reconsider and set aside its Order to Enjoin." (Mot. for Recons. at 4.) On May 13, 2008, this Court issued Order Enjoining Joseph-Mario Spates from Acting as a Petition Preparer for One Year ("Injunction Order") (Doc. # 25), which enjoined Mr. Spates from acting as a petition preparer in the Northern District of Ohio for a period of one year based on Mr. Spates's unauthorized practice of law. The Injunction Order sets forth all relevant facts, which will not be repeated, but which are incorporated by reference herein. As set forth herein, the Court finds that the Motion for Reconsideration does not set forth any basis to vacate or "set aside" the Injunction Order, but does find that the Injunction Order should be modified, as set forth below.

I. FAILURE TO COMPLY WITH REQUIREMENTS TO SEEK RECONSIDERATION

This Court's requirements regarding motions for reconsideration are set forth in Memorandum to All Attorneys Practicing in the Youngstown Bankruptcy Court, dated February 1, 2008, regarding Bankruptcy Court Policies and Procedures ("Memo re Procedures"), which is posted on the Court's website.¹ As stated therein, the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure do not contemplate motions for reconsideration (except for reconsideration of bankruptcy claims). "Neither the Bankruptcy Code

¹Although Mr. Spates is not an attorney, he is representing himself *pro se* and is, accordingly, bound by the same rules and standards that govern the practice of law by attorneys.

nor the Federal Rules of Civil Procedure recognize a motion for reconsideration, therefore, . . . the motion must be construed as either a Fed. R. Civ. P. 60(b) or Fed. R. Civ. P. 59(e) motion." *Reppert v. Western National Bank (In re Reppert)*, 271 B.R. 393, 395 (D. Kan. 2001). To the extent a motion for reconsideration is filed within ten days after entry of an order, it may be deemed to be a motion to amend a judgment under Rule 59. If a motion for reconsideration is filed after that ten-day period, it must be brought pursuant to Rule 60, seeking relief from judgment or order. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 268 (6th Cir. 1998). "The purpose of Rules 59 and 60 is not to provide a 'second bite at the apple' or a 'do-over.' A motion for reconsideration is an extraordinary measure and should be brought to correct a manifest error of law or fact on the part of the Court. It is not a substitute for filing a notice of appeal." (Memo re Proc. at 5.)

The Motion for Reconsideration was filed within ten days after the entry of the Injunction Order; therefore, the Court will treat it as a motion to alter or amend judgment under Rule 59(e).

Rule 59 does not contain express grounds for amending a judgment, but "[c]ourts may grant a motion to alter or amend a judgment in any of the following circumstances:

- To take account of an intervening change in controlling law
- To take account of newly discovered evidence
- To correct clear legal error
- To prevent manifest injustice"

12 JAMES WM. MOORE, ET AL., MOORE'S FEDERAL PRACTICE ¶ 59.30[5] (3d ed.

rev. 2008); see also *Farinacci v. Picayo*, 149 F.R.D. 435, 437 (D. P.R. 1993) ("The purpose of a motion to alter or amend a judgment under Rule 59(e) 'is to correct manifest errors of law or to present newly discovered evidence.' Thus, under traditional Rule 59(e) standards, motions to alter or amend are granted only if there has been a mistake of law or fact or new material evidence has been discovered that was unavailable previously." (citation omitted)).

Mr. Spates, however, does not even purport to seek reconsideration based upon: (i) an intervening change in controlling law; (ii) newly discovered evidence; or (iii) clear legal error. The Motion for Reconsideration also fails to provide any basis for the Court to reconsider the Injunction Order on an equitable basis, *i.e.*, to prevent a manifest injustice.

Because there is no reason under Rule 59 for this Court to "reconsider" the Injunction Order, the Court could, on that basis alone, deny the Motion for Reconsideration.

II. MR. SPATES'S INTERPRETATION OF THE INJUNCTION ORDER

In the Motion for Reconsideration, Mr. Spates: (i) contends that he has not "violated any provisions of Sections (a-j) of 11 U.S.C. [sic] as it relates to his status as a bankruptcy petition preparer;" (ii) disagrees with the Court's characterization of the Prior Injunction Order (as defined in the Injunction Order) and argues that he fully complied with such Prior Injunction Order; and (iii) argues that the Court abused its discretion in issuing the Injunction Order. (Mot. for Recons. at 2-3.)

A. 11 U.S.C. § 110

Mr. Spates states that the Court did not find him in violation of 11 U.S.C. § 110(a) through (j). Although not explicitly referenced, it is clear from the finding that Mr. Spates engaged in the unauthorized practice of law that the Court did find Mr. Spates in violation of 11 U.S.C. § 110(e)(2) inasmuch as Mr. Spates's conduct in providing forms or formats to Debtor Mary Jo Shuster constituted legal advice. Mr. Spates performs activities that constitute the unauthorized practice of law for at least some of the people who come to him for petition preparer services. As indicated in the Injunction Order, this is not the first time that Mr. Spates has been before this Court regarding his unauthorized practice of law. To the extent it was not otherwise clear in the Injunction Order, this Court finds that Mr. Spates has repeatedly engaged in conduct that constitutes the unauthorized practice of law.

Mr. Spates is correct that the Injunction Order is not based on his failure to comply with a previous order of the Court and, consequently, is not based on 11 U.S.C. § 110(j)(3). Accordingly, the last paragraph of the Injunction Order is hereby modified to read:

Accordingly, this Court finds that Mr. Spates has engaged in the unauthorized practice of law in connection with the instant case and in connection with other cases. Based on: (i) the Court's finding, (ii) the authority in 11 U.S.C. §§ 105 and 110(j)(2)(B), and (iii) the

authority of the Court to issue orders to give full effect to the State of Ohio's prohibition on the unauthorized practice of law, the 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 that court may deem appropriate.

B. Prior Injunction Order

At the April 24, 2008, hearing on the Court's Order to Appear and Show Cause (dated April 1, 2008), Mr. Spates acknowledged that he had been in this Court concerning the unauthorized practice of law on at least one prior occasion. In the Prior Injunction Order this Court enjoined Mr. Spates from acting as a petition preparer for a one-year period based upon his admitted unauthorized practice of law. The Prior Injunction Order was entered in the following chapter 7 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. A copy of the Prior Injunction Order is attached hereto and incorporated herein as Attachment A.

Mr. Spates "objects and respectfully disagree [sic] with the Court as to the 'Prior Injunction Order'[" (Mot. for Recons. at 2.) Mr. Spates states that the Prior Injunction Order was filed

only in the bankruptcy case of Eric E. Richard and Essie D. Richard, Case No. 06-40078. As is clear from a review of Attachment A, that is not the case. The Prior Injunction Order was filed in each of the four cases listed in the caption thereof.

Mr. Spates is confused about the Prior Injunction Order, which was issued after the Court held a hearing on the Court's Order to Appear and Show Cause ("March 2006 OSC")² directed to Mr. Spates. The United States Trustee ("UST") filed a response to the March 2006 OSC, in which UST urged the Court to permanently enjoin Mr. Spates from acting as a petition preparer because he had failed to abide by an Agreed Order issued by the United States Bankruptcy Court in Akron concerning conduct that constituted the unauthorized practice of law. As a consequence, Mr. Spates's statement that the Prior Injunction Order was entered "as a result of the Office of the U.S. Trustee filing a motion against [him] for unauthorized practice of law[]" is incorrect. (Mot. for Recons. at 2.)

Mr. Spates further argues that the Court "predicates the Prior Contempt Order as the basis for the Court's decision to once again enjoin [him] from acting as a bankruptcy petition preparer[,]" (*Id.*) and that he complied with the "Court's prior Contempt Order" by paying \$500.00 to the Court, as the amount he was required to disgorge. (*Id.* at 2-3.) On February 24, 2006, the Court issued Order Requiring Petition Preparer Joseph-Mario Spates to Disgorge

²Issued on March 16, 2006, in Case Nos. 06-40078, 06-40080, 06-40093 and 06-40108.

Fees and to Pay Fine ("Disgorgement Order"), a copy of which is attached hereto and incorporated herein as Attachment B. The Disgorgement Order required Mr. Spates to pay a fine in the amount of Five Hundred Dollars (\$500.00) ("Fine") based on his failure to file the Disclosure of Compensation (as defined in the Disgorgement Order). At the time of the hearing on the March 2006 OSC, Mr. Spates had failed to pay the Fine. As a consequence, the Prior Injunction Order: (i) enjoined Mr. Spates from engaging in any activity as a petition preparer within the Northern District of Ohio for a period of one year, based upon his admitted unauthorized practice of law; and (ii) required Mr. Spates to pay the Fine within one week after entry of the Prior Injunction Order.

Thus, Mr. Spates's characterization of the Prior Injunction Order as the basis for the Injunction Order is incorrect. Mr. Spates paid the Fine and, as far as the Court is aware, refrained from acting as a petition preparer in this district during the prior one-year injunction period. The Court, however, did not base the Injunction Order on any failure of Mr. Spates to comply with the Prior Injunction Order. Instead, based upon a review of the documentation leading up to the Prior Injunction Order, the Court determined that Mr. Spates was not credible in his representation that he had not been involved with drafting or typing the Complaint or Amended Complaint filed by Debtor Mary Jo Shuster.

C. Abuse of Judicial Discretion

The last argument posited by Mr. Spates is that the Court

abused its discretion in enjoining him because he had not violated any provision of 11 U.S.C. § 110(a)-(j). As set forth above, the Court found that Mr. Spates had violated § 110(e)(2). As a consequence, Mr. Spates's argument is without foundation. The Injunction Order, as modified above, no longer refers to § 110(j)(3). As set forth in the Injunction Order, and as Mr. Spates expressly acknowledges, a bankruptcy court has the power to regulate the practice of law in cases before it. The Court did not abuse its discretion in enjoining Mr. Spates from activities as a petition preparer based upon his conduct that constituted the unauthorized practice of law.

III. CONCLUSION

As set forth above, the Court has reconsidered the Injunction Order and finds no compelling reason to vacate it or set it aside. The Injunction Order stands as originally entered, with the following exceptions: (i) the final paragraph of the Injunction Order has been modified, as set forth *supra*; (ii) the citation to *In re Feguson* on page 9 of the Injunction Order contains a typo, and should read "326 B.R. at 423;" and (iii) the case number for Davida Daniels on page 8 of the Injunction Order contains a typo, and should read "Case No. 08-40353." In all other respects, the Injunction Order remains in full force and effect.

#

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

FILED
U.S. BANKRUPTCY COURT
2006 APR 14 PM 3:19
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN RE: *
*
ERIC E. RICHARD and * CASE NUMBER 06-40080
*
ESSIE D. RICHARD, * CHAPTER 7
*
Debtors. * HONORABLE KAY WOODS
*

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

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

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

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

The matter before the Court is the Order Directing

Petition Preparer Joseph-Mario Spates ("Spates") to Appear and Show Cause ("Show Cause Order") why he should not be (i) enjoined from acting as a petition preparer, (ii) further sanctioned, and/or (iii) further fined for (a) his failure to comply with orders of this Court, and (b) for the unauthorized practice of law. The Court issued the Order to Appear and Show Cause on March 16, 2006. Upon the motion of Spates for a two week extension of time to retain counsel, this Court adjourned the hearing on the Show Cause Order until April 13, 2006. The hearing on the Show Cause Order was held on April 13, 2006.

On March 24, 2006, the United States Trustee filed Response of United States Trustee to Show Cause Issued by United States Bankruptcy Court Directing Petition Preparer Joseph-Mario Spates to Appear and Show Cause ("UST Response"). The UST Response urged the Court to permanently enjoin Spates from acting as a petition preparer because Spates had failed to abide by and had violated an Agreed Order issued by the Bankruptcy Court in Akron concerning his prior conduct that constituted the unauthorized practice of law.

On March 28, 2006, Spates filed Preparer's Response to Court's Show Cause Order; and United States Trustee's Argument for Permanent Enjoinment [sic] as a Result of Preparer's Alleged Violation of 11 U.S.C. Section 110 ("Spates' Response"). Spates' Response did not address his failure to pay the Five Hundred Dollar (\$500.00) fine imposed by this Court on February 24, 2006 or the allegation that he had engaged in the unauthorized practice of law.

Instead, the Spates' Response dealt solely with what Spates characterized as the "unsubstantiated statement of the Trustee" and that the Trustee "deliberately misled" the Court in the UST Response.

Spates appeared at the hearing on April 13, 2006 and confirmed that he had, indeed, prepared pleadings for Eric E. Richard and Essie D. Richard to file in Case No. 06-40078. He also admitted that he had not paid the Five Hundred Dollar (\$500.00) fine, as previously ordered. The only reason offered by Spates for the failure to pay the fine was that he intended to retain a lawyer and oppose the imposition of the fine. The Court noted that Spates had not appealed the February 24, 2006 order and that it was now a final order of the Court.

The United States Trustee rested on its Response.

Despite the docket entry showing the Agreed Order dated March 24, 2006 in *Eisen v. Spates*, Adv. Pro. No. 05-05118, Bankruptcy Case No. 05-53303 (Debtor Kayondia Bradley), Spates continued to allege that he never agreed to this order. The Court, in reliance on the admitted conduct of Spates that constituted the unauthorized practice of law, and the authority in 11 U.S.C. § 110(j)(3), enjoined 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 April 14, 2007).

The Court further ordered Spates to pay the Five Hundred Dollar (\$500.00) fine within one week - by April 20, 2006 - or the Court would issue a further order to appear and show cause that

could result in the imposition of additional monetary fines.

IT IS SO ORDERED.



HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

FILED
U.S. BANKRUPTCY COURT

2006 FEB 24 AM 11:17

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

IN RE:	*	
	*	CASE NUMBER 06-40078
ERIC E. RICHARD and	*	
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(1)(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