





permanently enjoin Defendant Joseph Mario Spates from acting as a petition preparer; and (ii) order Mr. Spates to pay various fines based on the Defendant's actions, which exceeded the scope of his employment as a bankruptcy petition preparer.

On January 10, 2011, the Defendant filed Answer and Objection to Complaint (Doc. # 7, Adv. Pro. 10-4257), in which he admitted and denied various allegations as stated in the Complaint, but did not assert any affirmative defenses.

On January 12, 2011, the UST filed Complaint for Fines and Injunctive Relief Pursuant to 11 U.S.C. Section 110 ("Johnson Complaint") (Doc. # 1, Adv. Pro. 11-4010). On January 21, 2011, the Defendant filed Answer w/Affirmative [sic] Defense (Doc. # 7, Adv. Pro. 11-4010).

On June 27, 2011, the Court held a telephonic status conference on both matters, at which appeared Linda Maria Battisti, Esq., for the UST, and Mr. Spates, who appeared *pro se*. By agreement of the parties, both matters were consolidated for the purposes of trial.

On June 28, 2011, the Court entered Trial Order, which set the instant adversary proceedings for trial on August 29, 2011 ("Trial"). At the Trial, Ms. Battisti appeared on behalf of the UST, but Mr. Spates failed to appear personally or through any representative. Despite Mr. Spates's absence, the Court proceeded with the Trial and took the matter under advisement at the Trial's conclusion. At the Trial, the UST offered the testimony of three witnesses: (i) Michael D. Buzulencia, Esq., the Chapter 7 Trustee

assigned to the Johnson case; (ii) Michael A. Gallo, Esq., the Standing Chapter 13 Trustee in the Korodi case; and (iii) Stephen E. Korodi. Although the UST also listed Trocola Johnson as a witness, Ms. Johnson failed to appear at the Trial<sup>2</sup>.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

#### **I. TROCOLA C. JOHNSON CASE**

Debtor Trocola C. Johnson filed a petition, *pro se*, pursuant to chapter 7 of the Bankruptcy Code on October 21, 2010. On that same date, the Debtor filed Petition Preparer Disclosure of Compensation ("BPP Disclosure") (Doc. # 9, Main Case), which states that Mr. Spates prepared Ms. Johnson's "Chapter 7 Petition; Means Test; Schedules A, B, C, D, E, [sic] G, H, I, J; Exhibit D; Matrix List; Statement of Financial Affairs" and that the Defendant received \$125.00 in compensation for such services. The Debtor also filed Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer ("BPP Declaration") (Doc. # 8, Main Case), which included a pre-printed Notice, signed by the Debtor, that stated Mr. Spates

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<sup>2</sup> Although the Trial was scheduled to begin at 9:30 a.m. on August 29, 2011, the Court delayed the start of the Trial until 9:50 a.m. Despite this delay, neither Ms. Johnson nor the Defendant appeared.

was "not an attorney and may not practice law or give legal advice." On March 24, 2011, Ms. Johnson received a discharge (Doc. # 32, Main Case).

Mr. Buzulencia testified concerning statements Ms. Johnson made at the § 341 Meeting about the legal advice Mr. Spates purportedly provided to Ms. Johnson; however, Mr. Buzulencia had no first-hand knowledge about any actions taken by the Defendant or legal advice that Mr. Spates may have provided to Ms. Johnson. Because Ms. Johnson did not appear at the Trial, the Court finds that the UST did not carry its burden of proof in the Johnson Adversary Proceeding and, accordingly, hereby dismisses such case.

## **II. STEPHEN E. KORODI CASE**

Debtor Stephen E. Korodi, Jr. filed a petition, *pro se*, pursuant to chapter 13 of the Bankruptcy Code on November 24, 2010<sup>3</sup>. On that same date, the Debtor filed Petition Preparer Disclosure of Compensation ("BPP Disclosure") (Doc. # 8, Main Case), which states that Mr. Spates prepared Mr. Korodi's "Chapter 13 Petition; Matrix List; Mean [sic] Test; Schedules A-J; Summary of Schedules; Exhibit D" and that Mr. Spates received \$125.00 in compensation for such services. The Debtor also filed Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer ("BPP Declaration") (Doc. # 9, Main Case), which included a pre-printed Notice, signed by Mr.

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<sup>3</sup> Mr. Korodi previously filed, and received a discharge in, a chapter 7 case, denominated 03-42433. The Debtor filed his previous chapter 7 case on May 18, 2003, with his now ex-wife, Gidget L. Korodi. The Debtor and his ex-wife were represented by counsel in the previous bankruptcy action.

Korodi, which notified the Debtor that Mr. Spates was "not an attorney and may not practice law or give legal advice."

On December 22, 2010, the Chapter 13 Trustee, Michael A. Gallo, filed Motion to Dismiss (Doc. # 21, Main Case), on the basis "that the debtor is in default under the terms of the plan, for the reason that the payments required by the plan have not been made and that a showing has not been made of any just cause for default." The Court held a hearing on the Motion to Dismiss on January 12, 2011, at which the Court dismissed the Debtor's case. (See Order Dismissing Case, Doc. # 23, Main Case).

**A. LAW AND ANALYSIS**

Federal Rule of Bankruptcy Procedure 9011 and 11 U.S.C. § 105(a) grant bankruptcy courts the power to impose sanctions on those whose conduct "is an affront to the legal process." *In re Thompson*, 332 B.R. 769, 772 (Bankr. N.D. Ohio 2004); see also *Knowles Bldg. Co. v. Zinni*, (*In re Zinni*), 261 B.R. 196, 203 (6th Cir. 2001); FED. R. BANKR. P. 9011 (West 2010); 11 U.S.C. § 105(a) (West 2010).

**1. 11 U.S.C. § 110**

The Bankruptcy Code specifically governs the actions of bankruptcy petition preparers ("BPP") in Section 110. 11 U.S.C. § 110 (West 2010). Section 110(a) of the Bankruptcy Code, entitled "Penalty for persons who negligently or fraudulently prepare bankruptcy petitions" provides the definition of a BPP:

(a) In this section --

(1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2) "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.

(b)

\* \* \*

(2)

(A) Before preparing any document for filing or accepting any fees from or on behalf of a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with Rule 9009 of the Federal Rules of Bankruptcy Procedure.

(B) the notice under subparagraph (A)  
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(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

(iii) shall --

(I) be signed by the debtor, and under penalty of perjury, by the bankruptcy petition preparer; and

(II) be filed with any document for filing.

11 U.S.C. § 110 (West 2010). By his own admission, Mr. Spates is not an attorney licensed in the State of Ohio, although he has repeatedly represented to the Court that he graduated from the University of Connecticut School of Law.<sup>4</sup> Because the Defendant received compensation for preparing the Debtor's chapter 13 petition, schedules, and other documents, Mr. Spates qualifies as a BPP under Section 110(a) of the Bankruptcy Code.

At the Trial, the Debtor testified that he met with Mr. Spates on three separate occasions and, during each of these meetings, Mr. Korodi referred to Mr. Spates as "Attorney Spates." Mr. Korodi further testified that Mr. Spates never corrected this mistake or informed Mr. Korodi that Mr. Spates was not an attorney, in violation of 11 U.S.C. § 110(b)(2)(B)(i); instead, Mr. Spates

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<sup>4</sup> Despite his representations concerning attendance and graduation from law school, Mr. Spates has failed or refused to provide any documentation to support this representation. Whether or not the Defendant has any type of formal legal education, however, has no relevance because it is undisputed that the Defendant is not licensed to practice law.

permitted the Debtor to call him "Attorney Spates."<sup>5</sup> Section 110(b)(2)(B)(i) of the Bankruptcy Code requires a BPP to inform debtors that he or she is not an attorney, and is not permitted to give any legal advice. Despite Mr. Korodi's signature on the Disclosure, which includes pre-printed information conforming to the requirements of Section 110(b)(2)(B)(i), the Court finds that, in permitting Mr. Korodi to call him "Attorney Spates," the Defendant negated any meaningful disclosure regarding the prohibition on providing legal advice. Because the Defendant gave Mr. Korodi the impression that he was a lawyer and permitted Mr. Korodi to call him "Attorney Spates," the Court finds that Mr. Spates violated 11 U.S.C. § 110(b)(2)(B)(i).

## **2. Mr. Spates Provided Prohibited Legal Advice to Debtor**

Section 110(e)(2)(A) of the Bankruptcy Code prohibits a BPP from "offer[ing] a potential bankruptcy debtor any legal advice, . . ." 11 U.S.C. § 110 (West 2010). Specifically, Section 110(e) prohibits the following actions:

(B) the legal advice referred to in subparagraph (A) includes advising the debtor --

(i) whether --

(I) to file a petition under this title; or

(II) commencing a case under chapter

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<sup>5</sup> The Court notes that Mr. Korodi is not the first debtor who has referred to the Defendant as "Attorney Spates" in court proceedings. Based on this consistent and persistent reference by *pro se* debtors to the Defendant as "Attorney Spates," this Court concludes that the Defendant, at least implicitly, holds himself out as a lawyer by failing to correct people when they mistakenly call him an attorney.

7, 11, 12, or 13 is appropriate;

(ii) whether the debtor's debts will be discharged in a case under this title;

(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

(iv) concerning --

(I) the tax consequences of a case brought under this title; or

(II) the dischargeability of tax claims;

(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

(vii) concerning bankruptcy procedures and rights.

*Id.*

Mr. Korodi corroborated that Mr. Spates advised him to file a petition pursuant to chapter 13 rather than under chapter 7 because, having previously filed and received a discharge in a chapter 7 case within the past 8 years, Mr. Korodi was not eligible to receive another chapter 7 discharge. Mr. Spates counseled Mr. Korodi to file a chapter 13 petition, and told the Debtor that, if his chapter 13 plan was not feasible, Mr. Korodi would be able to convert to a case under chapter 7 once the 8-year time period expired. Because Mr. Spates specifically counseled Mr. Korodi and provided him with legal advice, the Court finds that Mr. Spates violated 11 U.S.C.

§ 110(e)(2)(B)(i)(II).

Mr. Korodi further testified that Mr. Spates instructed<sup>6</sup> the Debtor to run his own credit report and to bring the results to Mr. Spates's office. Mr. Spates then prepared the Debtor's schedules based solely on the debts listed on the credit report.

Using the credit report, Mr. Spates prepared Mr. Korodi's schedules, including Schedule C, which details the exemptions the Debtor elected to take with respect to his personal and real property. Mr. Korodi testified that Mr. Spates determined which exemptions the Debtor should take and under which section of the Ohio Revised Code each exemption should be claimed. Mr. Korodi testified that he took no action regarding which exemptions to take, and did not fill out Schedule C.

Section 110(e)(2)(B)(vi) of the Bankruptcy Code specifically prohibits a BPP from advising a debtor "how to characterize the nature of the debtor's interests in property." 11 U.S.C. § 110 (West 2010). Similarly, section 110(e)(2)(B)(iii) prohibits a BPP from advising "whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title." *Id.* Taken together, sections 110(e)(2)(B)(iii) and (vi) effectively prohibit a BPP from: (i) determining or helping a debtor to determine the exemptions a debtor is eligible to claim; and (ii) designating or helping a debtor to designate what property

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<sup>6</sup> The Debtor testified that the Defendant instructed the Debtor to a specific website where he could obtain his credit report.

the debtor may claim as exempt. Mr. Spates did not merely type Schedule C for the Debtor; instead, Mr. Spates actually selected the purported applicable sections of the Ohio Revised Code and determined the property to which each exemption applied on Schedule C (without any input from Mr. Korodi). As a consequence, the Court finds that Mr. Spates violated 11 U.S.C. §§ 110(e)(2)(B)(iii) and (vi).

Mr. Korodi also testified that Mr. Spates told him that, if the Debtor made his chapter 13 plan payments, the bankruptcy process was "cut and dry."<sup>7</sup> The Debtor acknowledged that, upon being reassured by Mr. Spates that chapter 13 was "cut and dry," *i.e.*, routine, he became more relaxed and felt more at ease about the bankruptcy process. Section 110(e)(2)(B)(vii) of the Bankruptcy Code specifically prohibits a BBP from offering legal advice regarding bankruptcy procedures and rights. 11 U.S.C. § 110 (West 2010). The Court finds that the above-referenced statements by Mr. Spates to the Debtor constituted legal advice concerning bankruptcy procedures and rights, and, accordingly, finds that Mr. Spates violated 11 U.S.C. § 110(e)(2)(B)(vii).

#### **B. DETERMINATION OF APPROPRIATE SANCTIONS**

Section 110(l)(1) of the Bankruptcy Code states, "[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

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<sup>7</sup> The expression is alternatively stated as being "cut and dried," which means "being done according to a plan, set procedure or formula; routine." [www.merriam-webster.com](http://www.merriam-webster.com).

more than \$500 for each such failure." 11 U.S.C. § 110 (West 2010). Based on the testimony and other evidence presented at the Trial, the Court finds that Mr. Spates has violated various provisions of subsections (b) and (e). See pages 8 - 12, *supra*. Accordingly, the Court determines a fine in the amount of \$500.00 for each violation of section 110(b) and section 110(e), *i.e.*, in the total amount of \$2,500.00, is an appropriate sanction.

Further, Section 110(i)(1) states:

[i]f a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee . . . and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor --

- (A) the debtor's actual damages;
- (B) the greater of -
  - (i) \$2,000; or
  - (ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and
- (C) reasonable attorneys' fees and costs in moving for damages under this subsection.

11 U.S.C. § 110 (West 2010). The Court finds that, in advising the Debtor that the bankruptcy process was "cut and dry," Mr. Spates committed an act that was both unfair and deceptive. Therefore, the Court finds that the Defendant shall be required to pay Mr. Korodi \$2,000.00 (which amount is greater than twice the amount paid by Mr. Korodi for the services provided by Mr. Spates).

**C. CONCLUSION**

As set forth above, the Court finds that Mr. Spates violated 11 U.S.C. §§ 110 (b)(2)(B)(i); (e)(2)(B)(i)(II); (e)(2)(B)(iii); (e)(2)(B)(vi); and (e)(2)(B)(vii). The Court further notes that the Defendant has previously been enjoined from performing the services of a BPP in the Northern District of Ohio based on his previous dealings with the Court (both for specific periods of time and most recently, permanently enjoined - See Case No. 11-40228). In addition, Mr. Spates was found to have engaged in the unauthorized practice of law by the Ohio Supreme Court in *Disciplinary Counsel v. Spates*, 128 Ohio St. 3d 435 (2011). It is clear that Mr. Spates has exhibited a willful pattern and practice of coupling his BBP services with prohibited conduct by providing unauthorized legal advice. As a consequence, this Court will permanently enjoin Mr. Spates from performing any BBP services in any United States District Court or Bankruptcy Court in the Northern District of Ohio.

An appropriate order will follow.

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IN RE:

STEPHEN E. KORODI,

Debtor.

\* \* \* \* \*

UNITED STATES TRUSTEE,

Plaintiff,

v.

JOSEPH MARIO SPATES,

Defendant.

CASE NUMBER 10-44394

ADVERSARY NUMBER 10-4257

HONORABLE KAY WOODS

\*\*\*\*\*  
ORDER (i) REQUIRING THE DEFENDANT TO (a) PAY FINE TO THE UNITED STATES TRUSTEE and (b) COMPENSATE THE DEBTOR; and (ii) PERMANENTLY ENJOINING THE DEFENDANT FROM ACTING AS A BANKRUPTCY PETITION PREPARER  
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This Court conducted a trial on August 29, 2011 ("Trial"), to determine if Defendant Joseph Mario Spates should be fined and/or permanently enjoined from acting as a bankruptcy petition preparer based on allegations that, as a non-lawyer, he was engaged in the unauthorized practice of law. On December 12, 2010, Daniel M. McDermott, United States Trustee, Ohio/Michigan, Region 9 ("UST") filed Complaint for Fines and Injunctive Relief Pursuant to 11 U.S.C. Section 110 (Doc. # 1, Adv. Pro. 10-4257).

At the Trial, Ms. Battisti appeared on behalf of the UST, but

Mr. Spates failed to appear personally or through any representative. Despite Mr. Spates's absence, the Court proceeded with the Trial and took the matter under advisement at the Trial's conclusion. At the Trial, the UST offered the testimony of three witnesses: (i) Michael D. Buzulencia, Esq., the Chapter 7 Trustee assigned to the Johnson case; (ii) Michael A. Gallo, Esq., the Standing Chapter 13 Trustee in the Korodi case; and (iii) Stephen E. Korodi. Although the UST also listed Trocola Johnson as a witness, Ms. Johnson failed to appear at the Trial.

For the reasons set forth in this Court's Memorandum Opinion, entered on this date, the Court hereby:

- (1) Dismisses Adversary Proceeding Number 11-4010;
- (2) Permanently enjoins Mr. Spates from performing any BBP services in any United States District Court or Bankruptcy Court in the Northern District of Ohio; and
- (3) Orders the Defendant, no later than fourteen (14) days after entry of this Order, to
  - (a) pay a sum of \$2,000 to the Debtor, Stephen E. Korodi and
  - (b) pay a fine of \$2,500 to the United States Trustee.

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