UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Elizabeth E. Brown

In re: DENA REQUAL PARSON-LEWIS, Debtor.	Bankruptcy Case No. 17-12218 EEB Chapter 7

ORDER IMPOSING SANCTIONS AND INJUNCTIVE RELIEF AGAINST BANKRUPTCY PETITION PREPARER FOR VIOLATIONS OF 11 U.S.C. § 110

THIS MATTER comes before the Court on the Motion for Order Requiring Disgorgement of Fees and Imposing Sanctions, Fines and Injunctive Relief Against Bankruptcy Petition Preparers Sarah Woodson and On My Own, LLC Under 11 U.S.C. § 110 ("Motion"), filed by the United States Trustee ("UST"). The Respondents did not file any form of response to the Motion and, therefore, the Court considers the allegations and requests in the Motion to be uncontested. The Court, having considered the Motion and the file in this matter and being otherwise advised in the premises, hereby FINDS AND CONCLUDES:

I. BACKGROUND

The Debtor hired bankruptcy petition preparers ("BPPs") Sarah Woodson ("Woodson") and On My Own ("On My Own") to prepare her bankruptcy documents. Woodson and On My Own charged the Debtor $350 for the services they provided. They filed her bankruptcy petition and the other required documents, including an application to pay the filing fee in installments, on March 17, 2017. Woodson and On My Own filed a Disclosure of Compensation of Bankruptcy Petition Preparer stating that they had received only $250 for document preparation services.

At her meeting of creditors, the Debtor testified that she met with Woodson about four times and Woodson and another employee of On My Own completed the Debtor's bankruptcy paperwork. Woodson decided where to list assets on schedule B and which creditors belonged on schedules D, E, and F and she chose the statutory citations for the exemptions the Debtor claimed. Woodson advised the Debtor that she could pay the filing fee in installments and prepared the application requesting that relief, including selecting the amounts of each installment. The Debtor received her chapter 7 discharge on October 31, 2017.

In his Motion, the UST alleges that Woodson and On My Own violated 11 U.S.C. § 110,[1] the Bankruptcy Code's provision regulating BPPs. Specifically the UST alleges that Woodson

[1] All future references to "section" or "§" are to the Bankruptcy Code, Title 11, United States Code.

and On My Own violated § 110(e)(2)(A) by providing legal advice to the Debtor, and that they violated § 110(h)(2) by failing to disclose all the fees they collected from the Debtor.

The UST requests the Court to order Woodson and On My Own to refund all fees they charged the Debtor, pay the Debtor a mandatory $2,000 statutory penalty, and pay additional fines aggregating $11,500 for each individual violation of § 110. The UST also seeks an injunction prohibiting Woodson and On My Own from acting as BPPs in this district.

II. DISCUSSION

A. Other Cases Involving Woodson

This is not this Court's first experience with a request to sanction Woodson as a BPP. In *In re Cordova*, Case No. 11-24204 EEB (Bankr. D. Colo. May 15, 2012), the Court ruled that Woodson provided legal advice in violation of § 110(e)(2)(A) when she selected the exemption statutes she placed on the debtor's Schedule C and when she advised the debtor to seek a waiver of the filing fee. It also ruled that she charged an excessive fee. The Court fined Woodson $4,000 and ordered her to disgorge the $499 fee she charged. In *In re Peinado*, Case No. 13-25139 EEB (Bankr. D. Colo. Dec. 8, 2014), the Court ruled that Woodson violated § 110(c) by failing to include her full Social Security number on six documents she filed on behalf of the debtor, and that she charged an excessive fee for her services. The Court ordered her to disgorge $300 of her fee, pay the trustee's attorney fees of $600, and imposed $3,200 in additional fines.

In addition, another division of the court entered a Stipulated Order of Injunctive Relief against Woodson in *In re Webber*, Case No. 13-19961 SBB (Bankr. D. Colo. Nov. 20, 2013). That order permanently enjoins Woodson and her agents, successors, or assigns from charging more than $250 for bankruptcy preparation services in Colorado unless she files a request for the court to approve fees in a higher amount.

Very recently, Judge Rosania considered a motion nearly identical to the one now before this Court. *See In re Moultry*, Case No. 17-11845 JGR, docket # 33 (May 24, 2017). In *Moultry*, Woodson filed a reply to the UST's affidavit regarding sanctions in which she stated that, as of November 1, 2017, she will no longer file bankruptcy cases in Colorado and, despite the fact that the UST did not seek an injunction in his Motion in *Moultry*, she "would like to receive my fine and have no problem **being permanently enjoined** from doing bankruptcies in the District." (emphasis in original). *Id.*, docket #49 (Nov. 1, 2017). Judge Rosania ruled that Woodson and On My Own violated §110(c), (d), and (e) by providing legal advice, failing to sign and place identifying numbers on each of the documents they prepared, and failing to furnish the debtor a copy of the documents they prepared. Judge Rosania ordered Woodson and On My Own to pay a $2,000 statutory penalty to the debtor and to refund the $250 fee they charged. He declined to enter any other fines or sanctions. *Id.*, at docket #50 (Nov. 3, 2017).

Finally, the UST has filed similar motions in two other cases now before this Court. The Court will enter orders in these cases, *In re Johnson*, Case No. 17-11844 EEB and *In re Files*, Case No. 17-12219 EEB, contemporaneously with this Order.

B. Violations of § 110 in This Case

Section 110(e)(2)(A) prohibits BPPs from providing any form of legal advice to a debtor. The uncontroverted facts in the Motion establish that Woodson provided legal advice to the Debtor when she chose which schedules on which to list the Debtor's assets and debts, when she selected which statutory exemptions the Debtor should claim, and when she advised the Debtor about her application to pay the filing fee in installments.

Woodson and On My Own also violated § 110(h)(2) when they failed to disclose they received a total of $350 for preparing the Debtor's bankruptcy documents. The Debtor testified that she paid $250 for the bankruptcy and an "extra" $100 for preparing a list of her debts. The UST asserts that the list of debts the Debtor referred to is the creditors' matrix -- a document that is required to commence a bankruptcy case -- and the Court agrees with that characterization. Clearly, Woodson and On My Own received more than $250 for preparing all of the documents they filed for the Debtor. Woodson and On My Own failed to disclose the extra $100 in an apparent attempt to circumvent the stipulated injunction in *In re Webber, supra*, that prohibits Woodson from charging more than $250 without a court order allowing a higher amount in a particular case.

C. Appropriate Sanctions

Pursuant to § 110(i), if a BPP violates any provision of §110, a court *must* order the BPP to pay the debtor the debtor's actual damages, the greater of $2,000 or twice the amount paid by the debtor to the BPP, and the debtor's reasonable attorney fees and costs. A court may, under § 110(h)(3)(B), order the BPP to disgorge all fees it received if it finds the BPP violated § 110(b), (c), (d), (e), (f), or (g). Section 110(l) allows a court to fine a BPP up to $500 for each violation of subsections (b)-(h) of § 110. Unlike statutory damages under § 110(i), which are mandatory, fines are permissive and subject to the Court's discretion. *In re Evans*, 413 B.R. 315 (Bankr. E.D. Va. 2009).

Under § 110(j), a debtor, creditor, trustee or United States trustee may seek injunctive relief against a BPP. The court may enjoin a BPP from acting as a BPP if the court finds that the BPP has "continually engaged in conduct" violating § 110, or "any other fraudulent, unfair, or deceptive conduct," and that "an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title." § 110(j)(2)(A) and (B).

As set forth above, the undisputed facts set forth in the Motion demonstrate that Woodson and On My Own violated § 110(e)(2)(A) and (h)(2). The Court has no evidence of any actual damages suffered by the Debtor and the Debtor paid no attorney fees in connection with the Motion. Accordingly, the mandatory fine under § 110(i) is $2,000. In addition, the Court exercises its discretion to order Woodson and On My Own to disgorge their $350 fee to the Debtor as a further sanction for their violations of § 110(e)(2) and (h)(2).

It greatly concerns the Court that Woodson has failed to abide by the clear directions in the prior orders of this Court and other judges within this district. Despite prior orders fining her for giving legal advice and for violating other provisions of § 110, Woodson continues to flagrantly disregard the statute. It is even more troubling that Woodson filed a false declaration concerning the fee she charged in this case in order to avoid the fee limit in the permanent injunction in *In re Webber*. It is apparent that fines and orders to disgorge fees do not dissuade Woodson from continuing to violate § 110 and that these prior sanctions have failed to motivate Woodson to conduct her petition preparation business in the manner permitted by the statute. She has continually engaged in conduct that violates § 110, and, in this case and in *In re Files*, she engaged in conduct designed to conceal from the Court the amount of the fee she charged the Debtor. Given Woodson's willful disregard of these prior orders and injunction, the Court finds that an injunction against further violations of § 110 would not be effective to bring Woodson's conduct in line with the requirements of §110. Therefore, pursuant to § 110(j)(2)(B), the Court will enter an injunction prohibiting Woodson and On My Own from acting as a BPP in this district.[2]

III. CONCLUSION

For the reasons stated above, the Court

ORDERS that the Motion is GRANTED; and Woodson and On My Own shall pay the Debtor $2,350, on or before January 16, 2018;

FURTHER ORDERS that Woodson and On My Own shall file a certificate of compliance evidencing that they have paid $2,350 to the Debtor on or before January 16, 2018;

FURTHER ORDERS that Woodson and On My Own are hereby permanently enjoined from acting as bankruptcy petition preparers in the District of Colorado; and

FURTHER ORDERS that, if Woodson and On My Own fail to comply with this Order, the Court may impose additional sanctions, including additional monetary fines and/or a finding that Woodson is in contempt of court.

DATED this 15th day of November, 2017.

BY THE COURT:

Elizabeth E. Brown, Bankruptcy Judge

[2] This Court is aware that in *Fulton v. McVay*, 318 B.R. 546, 552-52 (D. Colo. 2004), Judge Krieger ruled that a party seeking injunctive relief under § 110(j) must file an adversary proceeding. Nevertheless, the Court issues the injunction upon the UST's Motion for two reasons. First, the UST served Woodson and On My Own in the manner required by Fed. R. Bankr. P. 7004 and they had an opportunity to respond and to request a hearing. Woodson and On My Own received due process protection substantially identical to what they would receive in an adversary proceeding. Second, and more importantly, the Woodson consented to this relief in *In re Moultry, supra*, when she said she "had no problem begin permanently enjoined from doing bankruptcy in this District." If Woodson and/or On My Own disagree with this Court's entry of an injunction other than in an adversary proceeding, they may request reconsideration of this Order within fourteen days from the date of this Order.