

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

TERRI A. MORGAN

CASE NO. 97-60400

Debtor

IN RE:

MICHAEL F. DE SIMONE
DEBORAH DE SIMONE

CASE NO. 97-60900

Debtor

IN RE:

KENNETH R. SPENCER

CASE NO. 96-65997

Debtor

IN RE:

TODD E. HULL
HELEN M. HULL

CASE NO. 97-60891

Debtor

APPEARANCES:

GUY A. VAN BAALEN, ESQ.
Assistant U.S. Trustee
10 Broad Street
Utica, New York 13501

PHILIP J. DEVINE, ESQ.
Attorney for Bea Daniels
195 Main Street
Oneonta, New York 13820

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

The Court has joined these four cases for purposes of decision since they involve common questions of law and fact.

On March 4, 1997, the Court heard oral argument on the motions of the United States Trustee (“UST”) filed pursuant to Section 110 of the Bankruptcy Code (11 U.S.C. §§ 101-1330) (“Code”) seeking orders directing Beatrice J. Daniels, d/b/a Tri-Town/County Forms & Typing Service (“Daniels”) to turnover all fees paid by the respective Debtors in connection with the preparation of a bankruptcy petition filed by each Debtor referenced herein pursuant to chapter 7 of the Code.

Argument of the motions occurred at Binghamton, New York and following arguments, the contested matters were submitted for decision. Neither party requested an evidentiary hearing.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§ 1334(b), 157(a)(b)(1) and (2)(A).

FACTS

Daniels is no stranger to this Court having been the subject of a Memorandum-Decision and Order dated August 9, 1996, (“August ‘96 Order”) which was entered following a similar

motion of the UST challenging the fees charged by Daniels for preparation of a bankruptcy petition. Familiarity with that decision is assumed by the parties. (*In re Hinckley*, Case No. 95-63920, dated August 9, 1996.)

Factually, the cases now before the Court present the following scenarios:

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| a) Todd E. Hull
Helen M. Hull | Case No. 97-60891
Petition filed 2/20/97
Fee: \$295 Disbursement: \$30*
(*Filing fee not included) |
| b) Kenneth Spencer | Case No. 96-65997
Petition filed 12/19/96
Fee: \$350 Disbursement: \$30*
(*Filing fee not included) |
| c) Michael F. DiSimone
Deborah DiSimone | Case No. 97-60900
Petition filed 2/20/97
Fee: \$350 Disbursement: \$30*
(*Filing fee not included) |
| d) Terri Morgan | Case No. 97-60400
Petition filed 1/28/97
Fee: \$350 Disbursement: \$30*
(*Filing fee not included) |

There is no dispute that Daniels is a “bankruptcy petition preparer” within the meaning of Code § 110(a)(1).

ARGUMENTS

With regard to the Hull case, Daniels alleges that she spent some three months “gathering and regathering information for the petition.” During that period, Daniels estimates she expended approximately 12.1 hours interviewing the Hulls, reviewing their debt and letter of repossession

from creditors, working up a sheet of income and expenses, typing their petition, making telephone calls on their behalf, typing letters to creditors, making copies, etc.

In Spencer's case, she performed similar services expending approximately 13 hours, while DiSimones' case required 13.4 hours for almost identical services. Finally, the Morgan case consumed some 16.4 hours for very similar services.

Daniels argues that she performs only secretarial and bookkeeping services. She does not give legal counsel. In fact, her "customers" are encouraged to seek legal advice from an attorney of their choice or they can call her attorney "from my office to receive counsel at their own discretion." (*See* Answering Affidavit of Daniels sworn to April 23, 1997 at ¶3.) Daniels also opines that code § 110 was enacted "to regulate the fees the lawyers charge people for doing their Bankruptcy so they did not overcharge or take advantage". (*Id.* at ¶8)

Daniels' counsel, in a letter to the Court dated May 22, 1997, argues that Code § 110 does not mandate a standard fee nor does it limit the petitioner to simply typing on the bankruptcy petition the information provided by the debtor. He suggests that the fixing of an arbitrary fee will simply generate UST motions seeking a refund and thereby subvert the intent to the statute.

The UST simply reiterates the position taken in *Hinckley, supra*, that if Daniels truly limited her services to those envisioned by Code § 110, there would be no reason to have charged the fees obtained from the Hulls, the DiSimones, Mr. Spencer and Ms. Morgan. The UST also suggests that Daniels has violated Code § 110(h)(1) by failing to file declarations required by that section as to the several Debtors.

DISCUSSION

The Court is somewhat taken aback by its having to once again review what is essentially the identical factual scenario as the one it reviewed in *In re Hinckley, supra*. The only thing that is significantly different is that Daniels has changed attorneys.

The Court finds the suggestions of Daniels and her current attorney that Code § 110 was enacted to regulate the fees of bankruptcy attorneys or to improve the quality of bankruptcy petitions prepared by non-lawyers, to be ludicrous. As noted in 2 COLLIER ON BANKRUPTCY ¶110.L.H. at 110-19 (Lawrence P. King ed., 15th ed. rev. 1997) “In the face of increasingly frequent judicial confrontations with ‘typing services’ that actually offered, and charged debtors for, services extending to the unauthorized practice of law, Congress added section 110 to the Code as part of the Bankruptcy Reform Act of 1994.”

The Court appreciates Attorney Devine’s observations that Daniels fills a void for “people who cannot afford the minimum fees of lawyers in our area.” *See* letter from Philip J. Devine, dated May 22, 1997. The solution, however, to assist people who cannot afford an attorney, does not lie in the unauthorized practice of law.

Daniels clearly mixes debt/bankruptcy counseling with petition preparation, though she categorically denies giving legal advice. The problem is that Code § 110 creates a very limited window of opportunity for a “petition preparer” by defining such an individual as a “person other than an attorney or an employee of an attorney who prepares for compensation a document for filing” Code § 110(a)(1).

Arguably, the term “prepares” can be broadly construed to encompass numerous services

ranging from simply typing a petition using handwritten notations provided by the prospective debtor, to providing bookkeeping services, tracking down documents in public filing offices, and reviewing joint debt and letters of repossession from creditors.

It is clear, however, that Congress did not intend to paint the term “preparers” with such a broad brush. The House Judiciary Committee’s Report on the 1994 Reform Act indicates that Code § 110 was intended to address a nationwide problem. “Bankruptcy petition preparers not employed or supervised by an attorney have proliferated across the country. While it is permissible for a petition preparer to provide services solely limited to typing, far too many of them also attempt to provide legal advice and legal services to debtors. These preparers often lack the necessary legal training and ethics regulations to provide such services in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system.” 2 COLLIER ON BANKRUPTCY, *supra*, ¶110.L.H. at 110-19.

It is thus clear that Congress did not envision in enacting Code § 110 anything other than the simplistic exercise of typing a petition. No analogy was intended to be drawn nor was drawn between a bankruptcy petition preparer and an income tax return preparer who does in fact provide services that are not simply limited to typing a tax return.

Both Daniels and her attorney seem to conceptualize a bankruptcy petition preparer as one who fills a void for those prospective debtors who cannot afford to retain an attorney. The legislative history of Code § 110, however, gives no such indication that that was Congress’ intent. On the contrary, the legislative history suggests that Code § 110 was enacted to prevent the rendering of legal advice and legal services by non-lawyers. See 2 COLLIER ON BANKRUPTCY,

supra, ¶110.L.H. at 110-19.

While Daniels' action reviewed herein may not have strictly constituted the rendering of legal advice or the provision of legal services, her activities continue to tread dangerously close to such prohibitions. To approve fees in the amounts sought would only serve to encourage such activities on Daniels' part.

The Court, therefore, sees no reason to depart from its August '96 Order. It awards Daniels the sum of \$100 per debtor in connection with the preparation of the respective petitions. As was the case in the August 1996 Order, Daniels again fails to itemize her disbursements, but appears to collect a "flat" \$30 per Debtor. The Court further admonishes Daniels for her obvious disregard of the August '96 Order.

Finally, the UST contends that with regard to three of the four petitions, Daniels failed to comply with Code § 110(h)(1) in failing to disclose actual fees received. Daniels does not appear to provide any written response to that allegation nor is it clear that that Section mandates a penalty in addition to the forfeiture of any excessive fees.

Accordingly, the Court directs Daniels to remit to the respective chapter 7 case trustee all of the fees and disbursement received, less the sum of \$100 per debtor, within thirty (30) days of the service of this order or suffer the consequences pursuant to Code § 110(h)(4).

IT IS SO ORDERED.

Dated at Utica, New York

this 11th day of July 1997

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge