UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Misc. Pro. No. 9:13-mp-007-FMD

ATTORNEY and
DEBT RELIEF AGENCY,[1]

Respondent.
_____/

**ORDER GRANTING UNITED STATES TRUSTEE'S MOTION FOR SANCTIONS**

This miscellaneous proceeding comes before the Court for consideration of the United States Trustee's *Motion for Sanctions* (Doc. No. 1) (the "Motion") and the Respondents' written response (Doc. No. 9). The parties have met and conferred and have agreed to the entry of this Order.

This Order shall constitute the Court's findings and conclusions in accordance with Fed. R. Bankr. P. 7052 and 5003. This miscellaneous proceeding constitutes a core proceeding arising in and under 28 U.S.C. § 157(b)(1)-(2). The Court has jurisdiction over the Respondents pursuant to Fed. R. Bankr. P. 2090-1, 2090-2, and 11 U.S.C. §§ 329, 526-28, and 707(b)(4).

The United States Trustee commenced this miscellaneous proceeding after it discovered that the Respondents had requested and received payment of court filing fees from consumer clients in multiple Chapter 7 cases in which *in forma pauperis*[2] applications had been approved by the Court. The Respondents prepared both the Schedule B – Personal Property and the applications to proceed *in forma pauperis* in each of these Chapter 7 cases while failing to disclose to the Court the fact that the Respondents had received the filing fees from their clients and held them in their trust account pending the Court's ruling on the *in forma pauperis* applications. The Court, not having been informed that the debtors had readily-available funds with which to pay the filing fees, granted the *in forma pauperis* applications. The Respondents then refunded the funds they held in trust for the payment of the filing fees back to the respective debtors.

In 1978, Congress, out of a concern that transactions between a debtor and an attorney present serious potential for evasion and overreaching, enacted 11 U.S.C. § 329(a),[3] mandating that attorneys for debtors automatically disclose all payments received from, or on behalf of, their bankruptcy clients so that those transactions can be subjected to careful scrutiny.[4] Careful scrutiny is needed to ensure that: (1) fees charged for services are reasonable; (2) expenses reimbursed are actual and necessary; and (3) property of the bankruptcy estate is not secreted away in an attorney's trust fund or otherwise during the pendency of the bankruptcy case.[5] In the subject Chapter 7 cases, the Respondents did not disclose that they had received the court filing fees from the debtors or that they were holding those fees in trust for payment to the Clerk of the Bankruptcy Court in accordance with 28 U.S.C. § 1930 and Fed. R. Bankr. P. 1006.

In 2005, Congress enacted §§ 526, 527, and 528 to regulate the conduct of debt relief agencies in order to improve bankruptcy law and practice.[6] Under § 526(a)(2), a debt relief agency is prohibited from making a statement in a document filed in a bankruptcy case that is untrue or misleading. Further, a debt relief agency is prohibited from advising its client (i.e., the debtor) to make a statement in a document filed in a

[1] The Court has redacted the name of the attorney and debt relief agency for publication purposes.
[2] Pursuant to 28 U.S.C. § 1930(f), the bankruptcy court is permitted to waive filing fees in Chapter 7 cases if the debtor's income is less than 150 percent of the income official poverty line for a family of the size involved and if the debtor is unable to pay the filing fee in installments.
[3] Unless otherwise stated, all statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*
[4] *In re Dellutri Law Group*, 482 B.R. 642, 648 (Bankr. M.D. Fla. 2012).
[5] *Id.*
[6] *Milavetz, Gallop & Milavetz, P.A. v. U.S.*, 559 U.S. 229, 231-32 (2010).

bankruptcy case that the debt relief agency knows or should have known is untrue or misleading. Here, the Respondents prepared the applications to proceed *in forma pauperis* without disclosing that their clients had sufficient funds on hand, held in trust by the Respondents, to pay the court filing fees in full.

The Respondents have stated that they did not know that their receipt of the court filing fees should have been disclosed on (1) their disclosure of compensation of attorney for debtor; (2) the debtors' Schedule B – Personal Property; or (3) the debtors' applications to proceed *in forma pauperis*. But this explanation does not comport with Respondent Attorney's certification that a reasonable investigation into the circumstances that gave rise to the filing of a bankruptcy petition was performed prior to the filing of the bankruptcy papers and that Respondent Attorney has independently determined that the papers are well-grounded in fact.[7]

The Respondents admit that there are nine Chapter 7 cases in which they filed *in forma pauperis* applications while holding the court filing fees in trust and that these nine Chapter 7 cases are the only bankruptcy cases for which the Respondents filed *in forma pauperis* applications. This conduct evidences a clear and consistent pattern or practice of violations of §§ 526(a)(2), 526(c)(2)(A), and 526(c)(2)(C) of the Bankruptcy Code. Although no evidence of intent to violate § 526 has been demonstrated, intent is not required where a clear and consistent pattern or practice has been demonstrated.[8]

In this case, the Court specifically finds that the Respondents had no intent to violate § 526. Instead, it appears that the violations arose from the Respondents' negligent application and understanding of the Bankruptcy Code and Rules.[9] In further mitigation, the Respondents promptly and timely refunded to their debtor-clients the court filing fees upon entry of the orders approving the *in forma pauperis* applications. Although this is a mitigating factor on the issue of the Respondents' intent to violate § 526, it is also an aggravating factor on the issue of the Respondents' statutory obligation to disclose all payments received from the debtors and all property of the estate held by the Respondents in trust, and the Respondents' obligations as an attorney entrusted with funds payable to a third party – here, the Clerk of the Bankruptcy Court.

For the foregoing reasons, the Court finds and concludes that the Respondents have negligently violated §§ 329, 526, 707(b)(4) and Fed. R. Bankr. P. 2016 and 9011(b) in nine Chapter 7 bankruptcy cases, thus constituting a clear and consistent pattern of violation. The Respondents shall, within thirty (30) days, pay to the Clerk of the United State Bankruptcy Court the court filing fees and costs for each of the nine cases and, in addition, shall pay to the United States Trustee Fund the sum of $1,500.00 in civil penalties, attorney's fees, and costs. Due to the Respondents' conduct regarding trust fund management, as outlined above, they shall also submit to an office consultation with a Practice Management Advisor of The Florida Bar's Law Office Management Assistance Service. Finally, the Respondents are prohibited and proscribed in all future cases from failing to disclose all payments for fees or expenses in debtors' schedules, statement of financial affairs, *in forma pauperis* applications, other debtors' papers, or in the Respondents' disclosures of compensation of attorney for debtors.

**DONE** and **ORDERED** in Chambers at Tampa, Florida, on November 13, 2013.

/s/
Caryl E. Delano
United States Bankruptcy Judge

The United States Trustee is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

[7] 11 U.S.C. § 707(b)(4) and Fed. R. Bankr. P. 9011(b).
[8] 11 U.S.C. § 526(c)(5).
[9] The Respondents have practiced in the bankruptcy court for a relatively short time and are attorneys in just over one hundred pending bankruptcy cases.