

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
JOSE EMMANUEL RIVERA,) Case No. 6:14-bk-09284-KSJ
) Chapter 7
Debtor.)
_____)

GUY GEBHART, Acting United States)
Trustee,)
)
Plaintiff,)
vs.) Adversary No. 6:14-ap-00124-KSJ
)
CHRISTOPHER C. COBURN and)
COBURN VENTURES, LLC,)
)
Defendants.)
_____)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Debtor, Jose Rivera, paid Defendant, Chris Coburn, a “foreclosure-prevention consultant,” to delay or stop a foreclosure of his home. Coburn, earning his \$500, filed both an objection in the state court foreclosure case and a bankruptcy petition on Rivera’s behalf.¹ Plaintiff, the United States Trustee, seeks disgorgement, fines, and an injunction against Coburn, a bankruptcy petition preparer, alleging numerous violations of § 110 of the Bankruptcy Code.² Coburn argues he is *not* a petition preparer subject to § 110 requirements because the \$500 compensation was only for the paper filed in the state court not for the bankruptcy filing. The Court easily concludes that Coburn is a bankruptcy petition preparer, received compensation for

¹ Plaintiff’s Exhibits 5, 9.

² Doc. No. 1. All references to the Bankruptcy Code are to 11 U.S.C. § 101 *et seq.*

filing this bankruptcy case, and failed to comply with numerous requirements of § 110 of the Bankruptcy Code.

Coburn is the founder, president, and owner of Coburn Ventures LLC, which offers credit-repair and foreclosure-prevention services to unsophisticated consumers. Debtor, Jose Rivera, was trying to sell his home in a short sale when the foreclosure sale occurred. He then paid Coburn \$500 and hired Coburn to delay transfer of title to the purchaser at the foreclosure sale.³ Coburn, as requested, prepared and filed an objection to the foreclosure sale in state court and three papers in this Chapter 7 bankruptcy case: a bankruptcy petition, an application to waive the petition filing fee, and a statement of Social Security number in bankruptcy court on Rivera's behalf.⁴

The Court concludes that the Debtor specifically authorized the filings by Coburn in *both* the state court and this bankruptcy court. He paid the \$500 compensation for *all* services provided by Coburn without distinction whether the paper was filed in the state or the bankruptcy court. Although Rivera now claims he did not authorize the bankruptcy filing, the testimony and evidence paint a different picture. The many back-and-forth telephone calls and text messages between the Debtor and Coburn demonstrate that Rivera absolutely knew the bankruptcy filing would delay transfer of title in the foreclosure case. Rivera testified that he trusted Coburn's misguided advice that he was "filing for bankruptcy, but not really filing for bankruptcy." The evidence shows that, despite his professed "confusion" about the bankruptcy filing, Rivera did nothing to become informed about the bankruptcy process or the consequences of filing for bankruptcy. Rivera consented to the bankruptcy filing and paid Coburn to file bankruptcy for him.

³ Doc. No. 1, Ex. A.

⁴ Plaintiff's Exhibits 5, 6, 7.

Rivera provided Coburn with a copy of his driver's license and Social Security number, both of which are necessary to file a bankruptcy case, and paid Coburn \$500 to "cancel foreclosure."⁵ Coburn prepared and filed a Chapter 7 bankruptcy petition, an application to waive the filing fee, and a statement of Social Security number for Rivera.⁶ In drafting these documents, Coburn admitted the papers contained unverified information because he never even asked the Debtor about his assets, debts, or liabilities. Coburn further forged Rivera's signature on each of these documents. As a result, the documents contained inaccurate information, such as an imaginary monthly income amount and an inaccurate statement regarding Rivera's inability to pay the filing fee.⁷

Rivera, admittedly, was distressed when the bankruptcy filing caused unexpected difficulties for him. A few days after the bankruptcy filing on August 13, 2014, Rivera discovered that his checking account was frozen and wrote to Coburn that the bankruptcy filing, of which he obviously was aware, was causing him problems.⁸ Rivera, now understanding the true ramifications of filing bankruptcy, regretted his decision; realizing bankruptcy is not a good way to delay the foreclosure sale.⁹ But it was too late. Rivera will suffer for years from the damage caused by the bankruptcy filing reflected on his credit report and his resultant significantly lower credit score. Unfortunately, the Court can do little to help the Debtor recover from his own hasty decision.

Plaintiff, however, argues that Coburn is at least partially responsible for Rivera's situation. Section 110 of the Bankruptcy Code governs the conduct of non-attorney bankruptcy

⁵ Plaintiff's Exhibit 8.

⁶ Plaintiff's Exhibits 5, 6, 7.

⁷ Rivera's filing-fee-waiver application states that he is unable to pay the filing fee because he has "no money." Rivera however testified that he earned about \$4,000-\$10,000 per month and had about \$10,000 in his bank account on the petition date.

⁸ Plaintiff's Exhibit 11.

⁹ Plaintiff's Exhibit 11.

petition preparers. In enacting § 110, Congress was concerned with the increasingly large number of non-attorneys providing legal services to debtors and, in doing so, unfairly taking advantage of debtors unfamiliar with the bankruptcy process.¹⁰ Therefore, Congress enacted § 110 to “protect consumers from abuses by non-attorney bankruptcy petition preparers.”¹¹

Although attorneys are subject to numerous rules regulating the practice of law—plus the rigorous competency and character assessments conducted before a lawyer can become licensed—no such regulation or licensing requirements exist for non-attorney bankruptcy petition preparers.¹² Without such regulation, non-attorney bankruptcy petition preparers perform legal services without the legal training necessary to do so—and face no repercussions for providing such services in an inadequate manner.¹³ Congress enacted § 110 to regulate their conduct by providing monetary and injunctive relief for violations of its provisions.¹⁴ Nearly two decades after Congress enacted § 110, bankruptcy petition preparers prey on consumers, render poor legal advice, and cause long term, significant harm.

Section 110(a)(1) of the Bankruptcy Code defines bankruptcy petition preparer as “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.”¹⁵ Section 110(a)(2) defines a “document for filing” as 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.”¹⁶ Coburn undisputedly prepared three “documents for filing” for the

¹⁰ H.R. Rep. No. 103–835, at 56 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3365.

¹¹ *In re Webers*, 322 B.R. 216, 221 (Bankr. M.D. Fla. 2005) (Jennemann, J.).

¹² *Hobbs v. Fessenden (In re Hobbs)*, 213 B.R. 207, 211 (Bankr. D. Me. 1997) (Haines, J.).

¹³ H.R. Rep. No. 103–835, at 56.

¹⁴ 11 U.S.C. § 110.

¹⁵ 11 U.S.C. § 110(a)(1).

¹⁶ 11 U.S.C. § 110(a)(2).

Debtor: the Chapter 7 voluntary petition, the Application to Have the Chapter 7 Filing Fee Waived, and the Statement of Social Security Number.

Coburn argues his conduct is not governed by § 110 because he did not prepare Rivera's bankruptcy documents "for compensation." He claims Rivera paid only for the objection filed in state court. The bankruptcy "services," according to Coburn, were free.¹⁷ The Court utterly rejects this argument. Rivera paid Coburn \$500 to stop or delay the foreclosure. No written contract delineates the exact services Coburn was to provide Rivera. But the evidence shows that filing Rivera's bankruptcy petition was an integral part of Coburn's overall foreclosure prevention services, for which he received compensation. The objection to sale and the filing of the petition are inseparable. And, although Coburn paints himself as a mere courier who delivered bankruptcy-related paperwork, the Court finds he was paid to prepare and to file the false papers, including Rivera's forged signature. Coburn falls within the definition of a bankruptcy petition preparer and is subject to § 110.

Section 110(b) requires bankruptcy petition preparers to sign each document for filing, print their name and address on each document for filing, and provide a written notice informing the debtor that the bankruptcy petition preparer is not an attorney and cannot provide legal advice.¹⁸ Section 110(c) requires bankruptcy petition preparers to place an identifying number that identifies the individual who prepared the document.¹⁹

¹⁷ The Court notes that Coburn's filing of an objection to foreclosure sale on behalf of another person in a Florida state court likely amounts to the unlicensed practice of law. *See generally State ex rel. Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962) (defining unlicensed practice of law) *reversed on other grounds, Sperry v. State of Fla. ex rel. Florida Bar*, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963). *See also* R. Regulating Fla. Bar 10-1 *et seq.* (providing for investigation and prosecution of the unlicensed practice of law). Coburn also possibly knowingly disregarded a bankruptcy law or rule thereby committing a federal crime as prescribed by 18 U.S.C. § 156.

¹⁸ 11 U.S.C. § 110(b)(1)(A), (b)(1)(B), (b)(2). The written notice must be provided to the debtor before preparing any documents or accepting any fees and must be signed by both the debtor and the bankruptcy petition preparer and filed with any document for filing. 11 U.S.C. § 110(b)(2)(B).

¹⁹ 11 U.S.C. § 110(c).

Coburn committed multiple violations of the disclosure and identification requirements of § 110(b) and (c). Coburn failed to identify himself in any of the documents he prepared and filed, omitting his name, address, signature, and identifying number on each document in violation of § 110(b) and (c).²⁰ Coburn further provided no written notice, and consequently did not file such notice, of the nature of his services and the limitations placed on those services as a non-attorney under § 110(b)(2).

Section 110 provides various remedies for violations of its provisions. Section 110(l) allows for fines up to \$500 for each violation of a provision the statute.²¹ The Court leniently imposes a \$1,000 fine—\$500 for two of Coburn’s violations of § 110(b) and (c)—to be paid within 60 days to the United States Trustee as required by § 110(l)(4)(A).²² Section 110(h)(3)(B) also provides that all fees paid by or on behalf of the debtor may be forfeited in a case in which the bankruptcy petition preparer has failed to comply with § 110(b) or (c).²³ The Court also orders Coburn to disgorge the \$500 fee Rivera paid him for his services and return it to Rivera, who, although a willing participant, has been substantially harmed by Coburn’s actions.

Section 110(j)(1) further empowers the Court to enjoin a bankruptcy petition preparer from engaging in conduct that violates § 110 or may enjoin the person from continuing to act as a bankruptcy petition preparer.²⁴ The Court finds Coburn’s actions constitute grounds to enjoin him from engaging in any conduct that violates § 110 or any other provision of federal law, including 18 U.S.C. § 156. Coburn is ordered to comply with all requirements of § 110 of the Bankruptcy Code when preparing and filing bankruptcy documents for other persons. He cannot

²⁰ The identifying number of an individual bankruptcy petition preparer such as Coburn is the individual’s Social Security number. 11 U.S.C. § 110(c)(2)(A).

²¹ 11 U.S.C. § 110(l)(1).

²² Fines imposed under § 110(l) “in judicial districts served by United States trustees shall be paid to the United States trustees, who shall deposit an amount equal to such fines in the United States Trustee Fund.” 11 U.S.C. § 110(l)(A).

²³ 11 U.S.C. § 110(h)(3)(B).

²⁴ 11 U.S.C. § 110(j)(2)(A), (B).

receive payment from a client in connection with his “credit relief” efforts and then believe he can file the related bankruptcy case “for free” without complying with all the restrictions imposed by § 110.

The Court is acting leniently in this adversary proceeding, more to educate Coburn of his responsibilities as a bankruptcy petition preparer than to punish him. But, the Court cautions Coburn to take this admonition seriously. If he continues to flagrantly ignore his duties as a bankruptcy petition preparer, the Court will not hesitate to enforce the injunction stringently, including issuing a bench warrant for Coburn’s incarceration, if needed.

A separate Final Judgment shall be entered contemporaneous with these Findings of Fact and Conclusions of Law.

DONE AND ORDERED in Orlando, Florida, on April 17, 2015.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann" with a small "R.O." written above the end of the signature.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

Scott Bomkamp 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.