UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re: FRANK M. FERNANDEZ,
Debtor.
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Case No.: 9:09-bk-27897-ALP
Chapter: 7

DONALD F. WALTON,
United States Trustee
Plaintiff,

J. B. Vol. 15, #2108

vs.

Adv. No.: 9:10-ap-00121-ALP

ALANA DENNISE STROTHER, and
BANKRUPTCY FILING SERVICES,
Defendant.
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FINAL JUDGMENT BY DEFAULT AS TO THE DEFENDANTS
ALANA DENNIS STROTHER AND BANKRUPTCY FILING SERVICES

Default was entered by the Clerk of this Bankruptcy Court against the Defendant, BANKRUPTCY FILING SERVICES, on March 18, 2010. The United States Trustee filed a Motion for Default Judgment on May 10, 2010. As the United States Trustee seeks injunctive relief, in accordance with Fed. R. Bankr. P. 7065, *applying* Fed. R. Civ. P. 65(d) to adversary proceedings, this Court must set forth the reasons for entry of an injunction, and describe the acts sought to be restrained. Hearing on the United States Trustee's Motion for Default Judgment was held in open court on August 18, 2010. Present for the hearing was J. Steven Wilkes, Trial Attorney for the Plaintiff, the United States Trustee for Region 21, Donald F. Walton. Although the Chapter 7 Panel Trustee was present in court at the hearing, no appearance was made upon the record. No other party in interest appeared at the hearing.

At the hearing, the United States Trustee sought to admit 26 exhibits into evidence. Those exhibits included a sworn Affidavit of the Debtor, (Exhibit 14), declarations filed in the bankruptcy petition, schedules, and statements, (Exhibits 7, 8, 9, 10, 11, 12, and 13), declarations under 28 U.S.C. §1746, (Exhibits 15, 16, 17, 18, 19, 20, 22), as well as Bankruptcy Court documents from this Court and this Court's sister Bankruptcy Court in the Northern District of Georgia, (Exhibits 1, 21, 23, 24, 25, and 26). The remaining admitted exhibits are correspondence from the Defendants unto the Debtor and payments from the Debtor to the Defendants, (Exhibits 2, 3, 4, 5, and 6). In accordance with Fed. R. Evid. 401, 406, 603, 803, 804(b), 807, 901, 902, this Court reviewed the exhibits and all 26 exhibits were admitted into evidence.

Jurisdiction and Procedural Background

This Court has jurisdiction over this Adversary Proceeding under 28 U.S.C. §§ 157, 1334, 11 U.S.C. §§ 105, 110, and the standing order of reference. Venue is appropriate in this Court under 28 U.S.C. § 1409(a). This Adversary Proceeding presents a "core proceeding" under 28 U.S.C. § 157(b)(2)(A), (E), and (O). The Plaintiff is the United States Trustee for Region 21, comprising the jurisdictional boundaries of this Court as well as both of the Defendant's own locale in north Georgia. The Defendants are each respectively a "Bankruptcy Petition Preparer" as defined by 11 U.S.C. §110. This Court has subject matter jurisdiction.

The Plaintiff filed a complaint asserting violations of Section 110 by the Defendants, Alana Dennise Strother and Bankruptcy Filing Services on February 5, 2010. Appropriate

summons was issued by the Clerk of this Bankruptcy Court as to both Defendants. Proof of Service of the Summons and Complaint was filed indicating timely service upon both of the Defendants in accordance with Fed. R. Bankr. P. 7004. Although the Defendant, Alana Dennise Strother, did telephonically contact the Trial Attorney for the Plaintiff prior to the expiration of the time period to file an answer or otherwise defend, both of the Defendants failed to answer or otherwise defend the complaint. The Plaintiff sought entry of default on March 17, 2010. This Court has entered a default against Alana Dennise Strother and Bankruptcy Filing Services for their respective failures to answer or otherwise defend the complaint.

This Court had originally scheduled a final hearing on the United States Trustee's Motion for Default Judgment on June 2, 2010. At that hearing, the United States Trustee sought continuance because the United States Trustee had learned that the individual Defendant, Alana Dennise Strother, had filed a chapter 13 bankruptcy petition in the Northern District of Georgia. In an abundance of caution, the United States Trustee was seeking relief from the automatic stay in order to prosecute this Adversary Proceeding to final judgment. Not only did the United States Trustee obtain relief from the automatic stay in that case, the case was ultimately dismissed on July 14, 2010 with a bar to refiling for 180 days. By seeking relief from the automatic stay, the United States Trustee provided the Defendant, Alana Dennise Strother, with additional due process notice and opportunity to be heard. In that same vein, although not required under the Bankruptcy Code and Rules, the United States Trustee also served a copy of his Trial Exhibits 1-26 upon both Defendants

prior to the final hearing on default judgment. *See* (Doc. No. 15, 9:10-ap-121). Through the multiple bankruptcy filings by the Defendant, Alana Dennise Strother, together with the address changes associated therein, it appears that the Defendant is attempting to avoid this action. This Court finds and concludes that both of the Defendants have received sufficient and adequate service, process, service of process, due process, and adequate notice and opportunity to respond. Upon the foregoing, this Court finds and concludes that it has *in personam* jurisdiction over both the Defendants, Alana Dennise Strother and Bankruptcy Filings Services.

Prior to the final hearing on the United States Trustee's motion for default judgment, the individual Defendant, Alana Dennise Strother, did commence yet another chapter 13 case in the Northern District of Georgia. This case was commenced in violation of the United States Bankruptcy Court for the Northern District of Georgia's court order barring Ms. Strother from filing a bankruptcy case for 180 days under Section 109(g), title 11, United States Code. *See* Exhibits 24, 25, and 26. That case likewise was dismissed prior to this Court's final hearing on default judgment. No cautious position by the United States Trustee here is necessary. This Court has the statutory authority not only to oversee but further to sanction a Bankruptcy Petition Preparer under Section 110, title 11, United States Code. However, this Court also holds the inherent power to enforce the provisions of the Bankruptcy Code and Rules utilized by a Bankruptcy Petition Preparer in appearing before this Court in that statutorily authorized position. This is akin to the Court's inherent power over the attorneys appearing before it as officers of the court. This Court holds that the

enforcement provisions of Section 110 of the Bankruptcy Code and Rules would not be stayed by the automatic stay provisions of Section 362 by a bankruptcy case commenced by or against a Bankruptcy Petition Preparer as the debtor. This Court now turns to the actions of the Defendants arising in and related to the Debtor's chapter 7 case proceeding.

Factual Background

In August 2009, the Debtor received a letter offering assistance with preparing a chapter 7 bankruptcy petition. *See* Exhibit 2. The Debtor contacted the Defendant, Bankruptcy Filing Services, on August 24, 2009, at which time the Defendant, Bankruptcy Filing Services, agreed to prepare the Debtor a chapter 7 petition. *See* Exhibit 3. The Defendants invoiced and charged the Debtor $495 for the services to be rendered and the Debtor paid for those services by issuing two (2) separate checks made payable to Bankruptcy Filing Services. *See* Exhibits 4, 5, and 6. The solicitation letter did not provide the Debtor with adequate notice and disclosure of the difference between chapters 7, 11, 12, and 13. The Defendants had pre-determined that the Debtor should file a chapter 7 petition without regard to the Debtor's actual financial condition or the Debtor's desire with regards to addressing his financial situation.

Finally, on December 7, 2009, the Debtor filed for relief under chapter 7, title 11, United States Code, whereupon the petition, schedules, and statements disclosed that they had been prepared by the Defendant, Alana Dennise Strother as a Bankruptcy Petition Preparer. *See* Exhibit 7. Nowhere on the petition, schedules, statements, or declaration of the Bankruptcy Petition Preparer was it disclosed that the Debtor had contracted with

Bankruptcy Filing Services. The Statement of Financial Affairs, prepared by Ms. Strother as the Debtor's Bankruptcy Petition Preparer, disclosed that the Debtor had paid Ms. Strother $100. There was non-disclosure of any payment unto Bankruptcy Filing Services. *See* Exhibits 8 and 9. However, Ms. Strother's compensation disclosure only indicates that she was paid $95. *See* Exhibit 10. The Defendants also assisted the Debtor in preparing his Schedule C, wherein the Debtor exempted certain property under state or federal law as well as which property he intended to surrender, redeem, or reaffirm. *See* Exhibits 11 and 12. The Defendants also assisted the Debtor in preparing Schedule E which differentiates priority unsecured debt from general unsecured debt. *See* Exhibit 13. These actions constitute impermissible activities and services a Bankruptcy Petition Preparer is statutorily permitted to provide a debtor. *See* 11 U.S.C. §110.

At the Meeting of Creditors, the Debtor prepared an Affidavit in which he did declare that he paid Bankruptcy Filing Service $495 for Bankruptcy Petition Preparer services. *See* Exhibit 14. The Debtor provided the United States Trustee with correspondence and proof of payment. *See* Exhibit 22. Additionally, the United States Trustee was able to verify by using the federal bankruptcy court's PACER websearch, U.S. Party/Case Index Search, that the Defendant, Alana Dennise Strother, is a Bankruptcy Petition Preparer in the Northern District of Georgia. Between the time period of February 3, 2009 through May 21, 2010, there were no less than thirty-seven (37) cases associated with her as a Bankruptcy Petition Preparer. *See* Exhibits 21 and 22.

Upon a review of the chapter 7 case, the Adversary Proceeding, the declarations presented under 28 U.S.C. §1746 together with the other evidentiary exhibits introduced and admitted into evidence, and argument by counsel at the hearing on default judgment, this Court finds and concludes that default judgment is due to be granted against both Defendants. The injunction sought by the United States Trustee is well within the statutory provisions of Section 110 and should prove sufficient to remedially correct the actions and omissions of Ms. Alana Dennise Strother and/or Bankruptcy Filing Services acting as a Bankruptcy Petition Preparer. The monetary sanctions and awards are reasonable and within the statutory framework of Section 110. The attorney fees and costs sought by the United States Trustee, *see* Exhibit 20, are reasonable and minimal in light of a lodestar approach. The United States Trustee's requested hourly rates are well below those seen by this Court in the bankruptcy community. The time expended is minimal and evidences a concerted effort on the part of the United States Trustee to minimize the impact of such recovery.

Upon the foregoing, judgment is entered against the Defendants and in favor of the United States Trustee. The act or acts of Alana Dennise Strother and/or Bankruptcy Filing Services to be restrained are set forth *infra*.

Accordingly, upon the foregoing, and the findings and conclusions stated upon the record in open court, and for good cause found;

IT IS ORDERED, ADJUDGED, and **DECREED** as follows:

1. That the Default Judgment, Permanent Injunction, and Monetary Awards be and are hereby entered in favor of the Plaintiff, the United States Trustee for

Region 21, and against the Defendant, **ALANA DENNISE STROTHER**, her agents, employees, shareholders, principals, officers, directors, servants, attorneys, corporations, subsidiaries, affiliates, associates, assigns, successors, all persons or entities in active concert and participation with the Defendant, all other entities or persons directly or indirectly under the Defendant's control.

2. That the Default Judgment, Permanent Injunction, and Monetary Awards be and are hereby entered in favor of the Plaintiff, the United States Trustee for Region 21, and against the Defendant, **BANKRUPTCY FILING SERVICES**, its agents, employees, shareholders, principals, officers, directors, servants, attorneys, corporations, subsidiaries, affiliates, associates, assigns, successors, all persons or entities in active concert and participation with the Defendant, all other entities or persons directly or indirectly under the Defendant's control.

3. That the United States Trustee seeks $7,000.00 in sanctions against Alana Dennise Strother under Section 110(i) and 110(l). Alana Dennise Strother be and is hereby ordered to pay unto the United States Trustee as **MONETARY FINES** under Sections 110(i) and 110(l), an amount of $7,000.00.

4. That the United States Trustee seeks $7,000.00 in sanctions against Bankruptcy Filing Services under Section 110(i) and 110(l). Bankruptcy Filing Services be and is hereby ordered to pay unto the United States Trustee

as **MONETARY FINES** under Sections 110(i) and 110(l), an amount of $7,000.00.

5. That the United States Trustee also seeks reasonable attorney fees and costs of 5,669.18 against Alana Dennise Strother under Section 110(i). Alana Dennise Strother is hereby ordered to pay unto the United States Trustee as **REASONABLE ATTORNEY FEES AND COSTS** under Section 110(i), an amount of $5,669.18.

6. That the United States Trustee also seeks reasonable attorney fees and costs of 5,669.18 against Bankruptcy Filing Services under Section 110(i). Bankruptcy Filing Services is hereby ordered to pay unto the United States Trustee as **REASONABLE ATTORNEY FEES AND COSTS** under Section 110(i), an amount of $5,669.18.

7. These monetary awards, attorney fees and costs shall be paid by certified check or money order, payable to the order of the United States Trustee, and delivered to 501 East Polk Street, Suite 1200, Timberlake Annex Building, Tampa, Florida 33602 WITHIN THIRTY (30) DAYS of the entry of this judgment.[1]

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[1]In accordance with the Debt Collection Improvement Act, 31 U.S.C. §3701, et. seq, fines not paid within thirty (30) days of the court order will accumulate interest and penalties, assessed at the current Treasury rate. In accordance with the DCIA, partial payments will be applied first to interest and penalties and then to principal. Balances not paid within 180 days of the court order order will be referred to the U.S. Department of Treasury for collection.

8. That Alana Dennise Strother be and is hereby ordered to pay unto the Debtor, Frank M. Fernandez, as **MONETARY FINES** under Sections 110(h)(3) and 110(i), a total amount of **$2,990.00**. This monetary award shall be paid by certified check or money order, payable to the order of Frank M. Fernandez WITHIN THIRTY (30) DAYS of the entry of this judgment. A copy of said payment shall be delivered to the United States Trustee, 501 East Polk Street, Suite 1200, Timberlake Annex Building, Tampa, Florida 33602.

9. That Bankruptcy Filing Services be and is hereby ordered to pay unto the Debtor, Frank M. Fernandez, as **MONETARY FINES** under Sections 110(h)(3) and 110(i), a total amount of **$2,990.00**. This monetary award shall be paid by certified check or money order, payable to the order of Frank M. Fernandez WITHIN THIRTY (30) DAYS of the entry of this judgment. A copy of said payment shall be delivered to the United States Trustee, 501 East Polk Street, Suite 1200, Timberlake Annex Building, Tampa, Florida 33602.

10. That Alana Dennise Strother be and is hereby ordered to pay unto the Clerk of this Bankruptcy Court **$649.00**, as sanctions for the court costs and fees under chapter 123, title 28, United States Code. This monetary award shall be paid by certified check or money order, payable to the order of the United States Bankruptcy Court, 9:09-bk-27897-ALP, and delivered to 801 Florida Street, Tampa, Florida 33062 WITHIN THIRTY (30) DAYS of the entry of this judgment.

11. That Bankruptcy Filing Services be and is hereby ordered to pay unto the Clerk of this Bankruptcy Court **$649.00**, as sanctions for the court costs and fees under chapter 123, title 28, United States Code. This monetary award shall be paid by certified check or money order, payable to the order of the United States Bankruptcy Court, 9:09-bk-27897-ALP, and delivered to 801 Florida Street, Tampa, Florida 33062 WITHIN THIRTY (30) DAYS of the entry of this judgment.

12. That the Defendant, **ALANA DENNISE STROTHER**, and/or the Defendant, **BANKRUPTCY FILING SERVICES**, be and are hereby **PERMANENTLY ENJOINED AND RESTRAINED** from:

    a. Acting as a Bankruptcy Petition Preparer in the Middle District of Florida;

    b. Engaging in fraudulent, deceptive, and/or unfair conduct including, but not limited to falsely representing themselves to be able to quickly and cost effectively prepare acceptable bankruptcy documents for filing with a court in the United States of America;

    c. Acting or engaging, whether over the internet, via e-mail, computer software, any other electronic transmission, or by any other means, in any conduct in violation of Section 110, title 11, United States Code, in the United States of America;

d. Acting or engaging, whether over the internet, via e-mail, computer software, any other electronic transmission, or by any other means, in any conduct in violation of the Bankruptcy Code and Rules or the Local Rules of any Bankruptcy Court in the United States of America; and/or

e. Acting or engaging in the sale or license of any software, book, pamphlet, or other publication , whether orally or in writing, with or without compensation, concerning or regarding bankruptcy relief with regard to the preparation of any document for filing within the meaning Section 110, title 11, United States Code, in connection with any actual or potential case under title 11, United States Code, commenced or pending, or potentially to be commenced or pending, in the United States of America.

13. That jurisdiction of this matter is hereby retained by this Court. In the event that either of the Defendants, ALANA DENNISE STROTHER, and/or BANKRUPTCY FILING SERVICES violate this judgment, injunction, and restraining order, they may be subject to sanctions and/or discipline as this Court deems proper.

14. That the failure to comply with the terms of this judgment, injunction, and restraining order may result in a finding that the entity(ies) and/or individual(s) are in civil contempt, which could result in the assessment of additional fines, penalties, sanctions, or further relief.

DONE and ORDERED in Chambers this September 24, 2010.

DAVID H. ADAMS
United States Bankruptcy Judge

September 24, 2010

I CERTIFY THE FOREGOING TO BE A TRUE
AND CORRECT COPY OF THE ORIGINAL.
UNITED STATES BANKRUPTCY COURT
LEE ANN BENNETT, CLERK

Deanna B.

Copies furnished to:

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