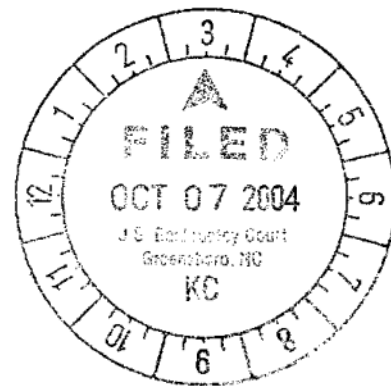


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:

THERON ALLEN THOMAS, SR.,

Debtor.

Case No. 04-12625

MEMORANDUM OPINION

THIS MATTER came before the Court for hearing on September 30, 2004 upon a Motion by the Bankruptcy Administrator to determine the propriety of actions and fees of petition preparer Malinda Spencer (the "Motion") and a Response thereto filed by Malinda Spencer. At the hearing, Robyn R. Compton Whitman represented the Bankruptcy Administrator, Gerald S. Schafer was present in his capacity as the Chapter 7 Trustee (the "Trustee"), Malinda Spencer ("Ms. Spencer") appeared pro se, and Theron Allen Thomas, Sr. (the "Debtor") appeared pro se.

PROCEDURAL BACKGROUND

The Debtor filed a Chapter 7 petition on August 27, 2004. The petition was signed by the Debtor and by Ms. Spencer as the petition preparer. The Bankruptcy Administrator filed the Motion on September 2, 2004, and requested that the Court conduct a hearing regarding Ms. Spencer's activities and fees as a petition preparer. Ms. Spencer filed a Response/Objection to the Motion on September 13, 2004. In response to the Motion, an Order was entered by the Court on September 22, 2004, directing Ms. Spencer to appear before the Court to determine (a) whether she had

violated any of the provisions of Section 110 of the United States Bankruptcy Code, (b) whether she had engaged in fraudulent, unfair, or deceptive acts within the meaning of Section 110(i), including the unauthorized practice of law, (c) whether any fee or compensation received by her was excessive, and (d) whether she should be enjoined from preparing further petitions in this district. A hearing was held on September 30, 2004, and evidence was received. Based upon the evidence and arguments presented at the hearing, a review of the Motion, a review of the Response filed to the Motion, and a review of the entire official file, this Court makes the following findings of fact and conclusions of law.

JURISDICTION

The Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157 (b) (2) (A), which this Court may hear and determine except for any matters that should be certified to the district court pursuant to 11 U.S.C. § 110 (i) (1).

FACTS

The Debtor filed this bankruptcy case on August 27, 2004 (the "Petition Date"). The initial filing consisted of a voluntary Chapter 7 bankruptcy petition and incomplete and inaccurate schedules, all prepared by Ms. Spencer on behalf of the Debtor. On August 27, 2004, the Clerk's office mailed a notice to the Debtor

informing him that he had fifteen days within which to file his Schedule A and Exempt Property Claim (Form 91C). The Debtor testified that upon receipt of this notice, he contacted Ms. Spencer and was told that she would prepare and file the missing documents on his behalf. The Debtor testified that Ms. Spencer already had the information needed to complete Schedule A and the Exempt Property Claim from the Debtor's pre-petition meetings with Ms. Spencer. Ms. Spencer filed a Schedule A and an Exempt Property Claim on behalf of the Debtor on September 9, 2004.

The Debtor testified that he contacted Ms. Spencer for help preparing the petition because he did not know the "language" to use to prepare it himself and because he knew that Ms. Spencer had been working in the legal field for a long time.¹ Ms. Spencer is an independent paralegal not affiliated with any legal firm or lawyer; she has worked in the paralegal profession for fifteen years. Ms. Spencer told the Debtor that he did not need a lawyer to prepare the petition, that she had filed some bankruptcy petitions before, and that she could prepare his bankruptcy petition for him.

Ms. Spencer testified that she charges \$50.00 an hour for freelance paralegal work. In order to propose a fee for her

¹The Debtor knew the background of Ms. Spencer because he was formally married to her.

services to the Debtor, Ms. Spencer testified that she telephoned several local law firms and inquired as to the amount they would charge to file a Chapter 7 bankruptcy petition for a client and that the responses ranged from \$800.00 to \$1,200.00. Ms. Spencer quoted the Debtor the price of \$100.00 to prepare his bankruptcy petition, which the Debtor tendered to Ms. Spencer in cash prior to the filing of the petition, along with the bankruptcy filing fee.

According to the Debtor and Ms. Spencer, the two met and the Debtor gave Ms. Spencer a copy of his recent bills, bank statements, and pay stubs. Ms. Spencer thereafter called the Debtor on at least one occasion to ask for more information to complete the Debtor's bankruptcy schedules. The Debtor testified that he asked, and Ms. Spencer answered, various questions concerning bankruptcy, his retention of certain property, and his Section 341 meeting of creditors.

Ms. Spencer testified that she got a blank copy of the bankruptcy petition and schedules from the website of the Court. She did not give a copy of the blank petition and schedules to the Debtor; instead, she used the copies of the Debtor's bills and statements to fill in the information herself.

After Ms. Spencer hand wrote the information on the petition and schedules, the Debtor testified that he went to Ms. Spencer's residence and signed the petition and schedules. He further testified that he did not review the petition and schedules, he

merely signed in the places on the documents where Ms. Spencer instructed him to sign.

It is unclear exactly when the Debtor paid Ms. Spencer, but prior to the filing of the petition, he testified that he gave her \$100.00 in cash for her services and additional cash for the bankruptcy filing fee. Shortly thereafter, Ms. Spencer brought the signed petition and schedules to the bankruptcy court, paid the filing fee, and filed the petition. After the petition was filed, Ms. Spencer testified that she had the Clerk's office make copies of the signed petition, of which she gave one to the Debtor.

Upon receiving notice that the petition was missing a Schedule A and Exempt Property Claim, Ms. Spencer filled out a Schedule A and an Exempt Property Form by hand, the Debtor signed the Exempt Property Form, and Ms. Spencer hand-delivered both to the Court on September 9, 2004. Due to errors in the Exempt Property Form filed on September 9, 2004, the Debtor was informed by the Trustee that the Exempt Property Form needed to be amended in order for the Debtor to be able to keep a vehicle that he wished to retain. In order to correct the Exempt Property Form, the Debtor sought the advice of an attorney,² and the attorney assisted him in preparing and filing an Amended Exempt Property Form, which was filed on September 29, 2004. No evidence was presented

²The Debtor testified that the unnamed attorney worked at the Debtor's place of employment.

indicating that the Debtor paid the attorney for his services.

ANALYSIS

Section 110 of the Bankruptcy Code regulates the conduct of bankruptcy petition preparers. Congress enacted Section 110 to "address the growing problem of bankruptcy [petition] preparers who abuse the system in the course of preparing documents for debtors to file." 2 Collier on Bankruptcy, ¶ 110.LH (15th ed. rev. A. Resnick & H. Sommer 2003) (p.110-22 - 110-24) (citing S. Rep. No. 103-168, 103rd Cong., 1st Sess 51 (1993)).

A. Is Ms. Spencer subject to the provisions of Section 110?

Under Section 110(a)(1), a petition preparer is defined as "a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing." Section 110(a)(2) defines a document for filing to be "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." It is undisputed that the Debtor paid Ms. Spencer to prepare the petition and schedules needed to file his Chapter 7 case and that Ms. Spencer obtained a copy of a blank petition and hand wrote the information of the Debtor in the places on the forms that she deemed appropriate. These facts establish that she "prepared" documents for filing in a bankruptcy case, and that she is therefore a "bankruptcy petition preparer" under Section 110 since she is neither an attorney nor an employee

of an attorney. Moreover, Ms. Spencer is subject to the provisions of Section 110 and hence required to comply with the provisions therein.

B. Did Ms. Spencer Comply with Section 110(b) and 110(c)?

Section 110(b) requires a petition preparer to sign the document she prepared and to print her name and address on the document. Section 110(c) requires the petition preparer to write her Social Security number on the prepared document. Failure to comply with either of these Sections may result in fines of up to \$500.00 for each violation. Ms. Spencer signed her name on the petition and printed her name and address thereon. However, she did not list her complete Social Security number as is required under Section 110(c). Further, Ms. Spencer failed to list her Social Security number on the Statement of Financial Affairs, the Chapter 7 Debtor's Statement of Intentions, and the Declaration Concerning Debtor's Schedules, writing ". . . 7791" in each occurrence. At the hearing, Ms. Spencer testified that she purposely failed to list her entire Social Security number because she did not want the page containing her Social Security number to be left out in plain view in the Clerk's office where someone could see it. This failure constitutes a clear violation of Section 110(c).

C. Fine for Violating Section 110(c).

Section 110(c) (1) provides that a bankruptcy petition preparer

who fails to comply with this Section "may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause." The term "may" indicates that the imposition of a fine lies within the discretion of the Court and is not mandatory. Likewise, the Court is given discretion in setting the amount of any fine, which may not exceed \$500.00 for each violation. In this case, Ms. Spencer failed to include her Social Security number on the petition in four places, and thus violated Section 110(c) four times.

Section 110(c)(1) states that a fine may be imposed "unless the failure is due to reasonable cause." Thus, the Court must decide whether Ms. Spencers' failure to comply in this case was due to reasonable cause. "Reasonable cause" is not defined in Section 110, but this Court uses the criterion that reasonable cause "exists where the violation is unavoidable through no fault of the violator." See In re Graham, Case No. 02-81930, slip op. at 12 (Bankr. M.D.N.C. February 13, 2004) (Stocks, J.), citing In re Hartman, 208 B.R. 768, 778 (Bankr. D. Mass. 1997). Ms. Spencer testified that she chose to omit her Social Security number because she did not want others to have access to it. This omission was not unavoidable conduct through no fault of her own; rather, it was a conscious decision to violate the requirement of Section 110(c). The Court, therefore, concludes that Ms. Spencer should be fined for this violation.

Regarding the amount of the fine that should be imposed, the Court will take into consideration that an explanation was offered for her failure to comply with the requirements stated on the forms and that Ms. Spencer's intentions in concealing her Social Security number were not to keep the Court from knowing her identity but to protect herself from the possibility that a member of the general public might see the document and misuse her Social Security number. Taking the circumstances of the Section 110(c) violation into account, this Court concludes that a fine of \$50.00 should be imposed for Ms. Spencer's violations of Section 110(c).

D. Did Ms. Spencer Comply with Section 110(d)?

Section 110(d) requires a petition preparer to furnish the debtor with a copy of the documents prepared by the petition preparer no later than the time at which a document for filing is presented for the debtor's signature. Both the Debtor and Ms. Spencer testified that the Debtor signed the documents, Ms. Spencer delivered the documents to the Court for filing, and after the documents were filed, Ms. Spencer had the Clerk's office make a copy of the filed petition, which she gave to the Debtor. Thus, Ms. Spencer did not give the Debtor a copy of the documents prepared until after the documents were filed, which was after the Debtor signed the documents, and this constitutes another violation of Section 110(d).

Section 110(d)(2) provides that the Court may fine Ms. Spencer

not more than \$500.00 for this violation unless her failure to comply was due to reasonable cause. No evidence was presented regarding why Ms. Spencer did not provide the Debtor with a copy of the documents immediately after the documents were signed by the Debtor. However, the Court does not believe the failure to comply with Section 110(d) was intentional or resulted in any harm to the Debtor and exercises its discretion to not impose a fine on Ms. Spencer for her failure to comply with Section 110(d).

E. Did Ms. Spencer violate Section 110(e)?

Section 110(e) states that a petition preparer "shall not execute any document on behalf of the debtor." The petition and other documents in this case that required the signature of the Debtor were signed by the Debtor and not by Ms. Spencer on the Debtor's behalf. Hence, Ms. Spencer did not violate Section 110(e).

F. Did Ms. Spencer violate Section 110(f)?

Section 110(f) prohibits a bankruptcy petition preparer from using the word "legal" or any similar term in any advertisements regarding the petition preparer's services. In this case, there is no evidence that Ms. Spencer advertised her services. Ms. Spencer and the Debtor were previously married to one another. It was through that relationship that the Debtor knew Ms. Spencer and knew that she had experience from working as a paralegal. The Court finds that Ms. Spencer did not violate Section 110(f).

G. Did Ms. Spencer violate Section 110(g)?

Section 110(g)(1) prohibits a petition preparer from collecting or receiving any payment from a debtor or on behalf of a debtor for the court fees related to the filing of the bankruptcy case. The Debtor testified that he gave Ms. Spencer cash in the amount of the filing fee. Ms. Spencer testified that she tendered the filing fee to the Court when she filed the Debtor's petition. Ms. Spencer's conduct violated Section 110(g)(1).

Section 110(g)(2) states that a bankruptcy petition preparer shall be fined not more than \$500.00 for each violation of this Section. The term "shall" mandates that a fine be imposed on Ms. Spencer for her violation of Section 110(g)(1). However, while the Court has no discretion in deciding whether or not to fine Ms. Spencer, the Court does have discretion in the amount of the fine imposed. The Court opines that the violation of Section 110(g)(1) was unintentional and, while it could have, it did not result in any harm to the Debtor. Taking the circumstances of the Section 110(g)(1) violation into account, this Court concludes that a fine of \$50.00 should be imposed for Ms. Spencer's violation of Section 110(g)(1).

H. Did Ms. Spencer comply with Section 110(h)?

Section 110(h)(1) requires a petition preparer to "file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior

to the filing of the case, and any unpaid fee charged to the debtor." On the Debtor's Statement of Financial Affairs, paragraph 9 disclosed that Ms. Spencer was paid \$100.00 for "payments related to debt counseling or bankruptcy" on August 26, 2004. However, Ms. Spencer failed to file a "Disclosure of Compensation of Bankruptcy Petition Preparer." The Court finds that a violation of Section 110(h)(1) occurred.

Section 110(h)(2) provides that a court "shall disallow and order the immediate turnover to the bankruptcy trustee of any fees referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared." Section 110(h)(3) provides that the debtor, the trustee, a creditor, or the Bankruptcy Administrator may file a motion for an order under Section 110(h)(2). The motion for show cause order filed by the Bankruptcy Administrator in this case is such a motion, and the Court therefore is called upon to determine whether the \$100.00 charged by Ms. Spencer in this case is in excess of the value of the services provided by Ms. Spencer as a petition preparer.

Services for which a petition preparer may be compensated are limited to authorized services that are performed by the petition preparer. In order for services to be authorized and compensable, the services must be services that a petition preparer can lawfully perform. This determination requires the Court to determine whether the services performed by Ms. Spencer constitute the

unauthorized practice of law. If Ms. Spencer performed services that constitute the practice of law, then she cannot be compensated for those services.

North Carolina law governs the discussion of what services constitute the practice of law in North Carolina. See, e.g., In re Boettcher, 262 B.R. 94, 96 (Bankr. N.D. Cal. 2001) ("While a federal court has inherent authority to regulate the conduct of all who practice in it, state law is properly considered in determining whether the unauthorized practice of law has occurred in a bankruptcy court."); In re Bachman, 113 B.R. 769, 772 (Bankr. S.D. Fla. 1990) (" . . . with regard to the unauthorized practice of law before United States Bankruptcy Courts, the courts have looked to state law for guidance.")

Only licensed attorneys may engage in the practice of law in North Carolina. See N.C.G.S. § 84-4 (2004). North Carolina law prohibits any person not admitted and licensed by the North Carolina State Bar as an attorney-at-law from engaging in the practice of law in North Carolina. See id. North Carolina General Statute Section 84-2.1 defines the practice of law to include "performing any legal service for any other person . . . with or without compensation, specifically including . . . the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies . . ." Most courts have concluded that a non-attorney may

provide mere typing or "scrivening" services and may not create a document for another person or advise on how the document should be prepared. Anything more than merely typing a petition or legal document for another person constitutes the practice of law. The same distinction has been applied to petition preparers under Section 110. For example, in In re Schneider, 271 B.R. 761, 764 (Bankr. D. Vt. 2002), the court held that "the [bankruptcy petition preparer] moves at his own peril when performing any service beyond that of simply typing the information provided by a prospective debtor on approved bankruptcy forms." In In re Guttierrez, 248 B.R. 287, 297 (Bankr. W.D. Tex. 2000), the court stated that "Section 110 itself proscribes virtually all conduct falling into the category of guidance or advice, effectively restricting 'petition preparers' to rendering only 'scrivening/typing' services. Anything else - be it suggesting bankruptcy as an available remedy for a debtor's financial problems, merely explaining how to fill out the schedules, or answering questions about exemptions or whether a claim is or is not secured will invariably contravene either state laws proscribing the unauthorized practice of law or other more specific provisions of § 110."

Ms. Spencer clearly engaged in the unauthorized practice of law. Ms. Spencer obtained a copy of the blank bankruptcy forms and, using information provided by the Debtor, filled in the information on the forms in the places that she deemed appropriate.

The Debtor then signed the places on the petition and schedules where Ms. Spencer instructed him to sign. Further, the Debtor testified that Ms. Spencer attempted to explain to him what an exemption was and to answer questions regarding what property he would be able to retain. Such actions constitute the practice of law under Section 110 and North Carolina law.

Thus, the only activities in which a petition preparer can engage are meeting with a prospective debtor, providing blank bankruptcy forms for the debtor to complete without any assistance from the petition preparer, typing the information on the applicable bankruptcy forms without change or alteration, copying the documents prepared for the prospective debtor, and delivering the original and at least one copy of the documents to the prospective debtor. See In re Graham, Case No. 02-81930, slip op. at 12 (Bankr. M.D.N.C. February 13, 2004) (Stocks, J.). To the extent that the petition preparer provides the above services, he or she is entitled to receive reasonable compensation. See In re Landry, 268 B.R. 301, 304 (Bankr. M.D. Fla. 2001).

Under Section 110, the burden of proving the reasonableness of a fee collected by a bankruptcy petition preparer rests upon the petition preparer. See, e.g., In re Froehlich, 23 Fed. Appx. 572, 574 (7th Cir. 2001) (2001 WL 1530594) (petition preparer, as the party seeking fees, "has the burden of establishing that he or she is entitled to them once a question regarding their reasonableness

has been raised."); In re Haney, 284 B.R. 841, 850-51 (Bankr. N.D. Ohio 2002); In re Doser, 281 B.R. 292, 313 (Bankr. D. Idaho 2002); In re Bush, 275 B.R. 69, 85-86 (Bankr. D. Idaho 2002). In the present case, the Bankruptcy Administrator has shown that Ms. Spencer acted as a petition preparer and that she collected a fee from the Debtor. The burden of proof regarding whether Ms. Spencer's fee was reasonable rested with Ms. Spencer. Ms. Spencer failed to show by a preponderance of the evidence that the fee that she collected was reasonable compensation for her services as a petition preparer.

Since a petition preparer can only provide services such as typing forms after a prospective debtor has made the decision to file a bankruptcy case, typing is the only service for which Ms. Spencer is entitled to be compensated in this case. Courts in this district use the analogy that the fee that is proper for a petition preparer is analogous to what a professional typist or work processor would charge because their services are most comparable to what a petition preparer is authorized to do. See In re Graham, slip op. at 23; see also In re Moore, 283 B.R. at 859; In re Bush, 275 B.R. at 85 (rejecting consideration of rates charged by paralegal because "[bankruptcy petition preparers] are prohibited from providing paralegal services"). This Court has found that approximately \$80.00 is reasonable compensation for such services. See In re Graham, slip op. at 23.

A petition preparer's services may be found to have been of no value where the services accomplished little benefit to the debtor, harmed the debtor, or put the debtor's discharge at risk. In such cases, the services of the petition preparer have no value or a negative value and no fees are allowed. See In re Paysour, 313 B.R. 109, 117-118 (Bank. E.D.N.Y. 2004).

In the present case, Ms. Spencer hand-wrote the petition and schedules. Thus, she performed no typing services. Further, there were several errors in the documents; a partial list includes the following: Schedule A and the Exempt Property Claim were missing; Schedule C showed that the Debtor owned clothing and household goods that were not listed in Schedule B; the original Schedule C listed a vehicle that was not listed on Schedule B; Schedule B listed one vehicle belonging to the Debtor, whereas the Debtor owned three vehicles on the Petition Date; the figures listed as "values" on Schedule D were actually the amounts owed to the creditor and not the value of the property; Schedule F listed a secured creditor (U.S. Bank) as an unsecured creditor;³ the Statement of Intentions listed a house and two vehicles as property to be retained and stated that each of the properties was exempt (one vehicle that the Debtor wished to retain was not listed on the Statement of Intentions); and paragraph 3 of the Statement of

³Ms. Spencer testified that the Debtor requested her to complete Schedule F in that manner.

Financial Affairs stated that no payments were made to creditors by the Debtor within ninety days of the bankruptcy filing that aggregated to more than \$600.00, however, the Debtor testified that he was current on his house and car payments on the Petition Date. Furthermore, Schedule C was amended by the Debtor for a third time on September 29, 2004, with the help of an attorney. If Schedule C had not been amended, the Debtor may have lost a vehicle that he wished to retain because of the inaccuracy of his Schedule C. As a further inconvenience, the Debtor had to miss work to appear at the September 30, 2004 hearing.⁴

Having found that no typing services were provided to the Debtor by Ms. Spencer and that the value of the services that Ms. Spencer did provide was of no value and indeed may have a negative value, the Court finds and concludes that the value of her services was no more than \$0.00, that the \$100.00 fee charged by Ms. Spencer was excessive, and that \$100.00 should be disallowed and that Ms. Spencer should be ordered to turn over \$100.00 to the Chapter 7 Trustee.

I. Injunctive Relief.

Pursuant to Section 110(j), the debtor, a trustee, a creditor, or the Bankruptcy Administrator "may bring a civil action to enjoin

⁴Ms. Spencer prepared a bankruptcy petition for the Debtor's fiancée, Carol Parks, Case No. 04-12712, on September 27, 2004. Ms. Spencer charged Ms. Parks \$300.00 to prepare her bankruptcy petition. Errors similar to those found in the Debtor's petition also occur in Ms. Parks' petition.

a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer." 11 U.S.C. § 110(j). Further, the fact that Congress has granted statutory standing to debtors, creditors, trustees and the Bankruptcy Administrator to seek injunctive relief does not preclude the bankruptcy court from raising the issue of injunctive relief by means of an order to show cause. See In re Graves, 279 B.R. 266, 273 (9th Cir. BAP 2002). However, if injunctive relief is sought through a show cause order instead of an adversary proceeding, principles of due process mandate that the petition preparer be afforded the procedural protections inherent in an adversary proceeding. See id. at 274. Notice to the petition preparer that injunctive relief is to be considered is an essential procedural protection that must be given to the petition preparer. See id. at 276.

The Bankruptcy Administrator filed a Motion to Show Cause and the Court issued a show cause order (the "Order") in response to the Motion which stated that one objective of the hearing would be "to determine whether Malinda Spencer should be enjoined from engaging in conduct which is in violation of Section 110 or from further acting as a bankruptcy petition preparer in this district." Since the Order provided notice for the injunctive relief, there is no procedural impediment to this court granting injunctive relief. See In re Graham, slip op. at 33, citing In re Moore, 290 B.R. 287,

292-93 (Bankr. E.D.N.C. 2003).

Ms. Spencer prepared and filed two bankruptcy petitions in the Middle District of North Carolina within one month. Both petitions contain numerous violations of Section 110 and are riddled with errors. While Ms. Spencer testified that she does not plan to prepare any further bankruptcy petitions or documents to be filed in this Court, the Court finds it appropriate to grant the injunctive relief available in Section 110(j) and to bar Ms. Spencer from preparing further documents to be filed in the Middle District of North Carolina.

J. Conclusion.

Based upon the foregoing findings and conclusions, an order shall be entered in this case contemporaneously with the filing of this memorandum opinion granting the following relief:

(1) Ms. Spencer shall be fined in the amount of \$100.00 in this case pursuant to Section 110(c)(3) and Section 110(g)(1) of the Bankruptcy Code;

(2) \$100.00 of the fee charged by Ms. Spencer in this case shall be disallowed, and Ms. Spencer shall be ordered to disgorge and turn over \$100.00 to the Trustee pursuant to Section 110(h)(2) of the Bankruptcy Code; and

(3) Ms. Spencer shall be enjoined from preparing any documents to be filed with this Court on behalf of any person other than herself.

This the 7 day of October, 2004.

Thomas W. Waldrep, Jr.

THOMAS W. WALDREP, JR.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

OCT 07 2004

U.S. BANKRUPTCY COURT
MDNC - KWC

IN RE:

THERON ALLEN THOMAS, SR.,

Debtor.

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) Case No. 04-12625
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ORDER

In accordance with the memorandum opinion filed contemporaneously with the entry of this Order, it is hereby ORDERED as follows:

1. The Court hereby disallows the entire \$100.00 fee received by Malinda Spencer ("Ms. Spencer") from the Debtor in this case, and Ms. Spencer is hereby ordered to disgorge and immediately turn over \$100.00 to the Chapter 7 Trustee in this case pursuant to Section 110(h)(2) of the Bankruptcy Code; and

2. Ms. Spencer shall be fined in the amount of \$100.00 pursuant to Section 110(c)(3) and Section 110(g)(1) and shall immediately remit said amount to the Chapter 7 Trustee in this case; and

3. Ms. Spencer is hereby permanently enjoined and prohibited: (a) from providing any services involving or relating to the preparation of bankruptcy petitions, schedules, statements of financial affairs and related documents for filing with the United States Bankruptcy Court for the Middle District of North Carolina other than pleadings and/or documents filed on her own

behalf; and (b) from providing any services or engaging in any conduct that constitutes the practice of law as defined in N.C.G.S. § 84-2.1.

This the 7 day of October, 2004.

Thomas W. Waldrep, Jr.

THOMAS W. WALDREP, JR.
United States Bankruptcy Judge