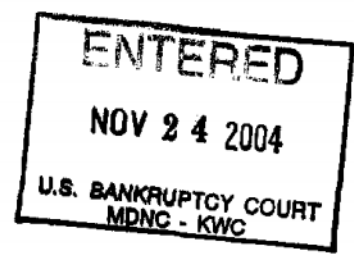


**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**



IN RE: )  
 )  
TERRENCE HOWERTON ) CASE NO. 04-12819  
 )  
Debtor. ) Chapter 7  
 )

**MEMORANDUM OPINION**

The issue in this matter is whether Eddie Dunn ("Dunn"), a bankruptcy petition preparer, has violated 11 U.S.C. § 110 and North Carolina law by preparing documents for filing in the Chapter 7 bankruptcy case of Terrence Howerton ("Debtor").

Dunn chose not to attend the show cause hearing in this matter, held on October 28, 2004, in Greensboro, North Carolina. After hearing the evidence presented by the Bankruptcy Administrator, the Court ruled from the bench that Dunn had violated Section 110 of the Bankruptcy Code, and the Court took the matter under advisement for further consideration. After reviewing the evidence and the relevant law, the Court will rule that Dunn has engaged in the unauthorized practice of law as defined in North Carolina and thereby violated Section 110(i)(1) of the Bankruptcy Code. Based on Dunn's actions, the Court will order Dunn to disgorge the \$149.00 that he charged the Debtor for his services and certify this matter to the United States District Court for the Middle District of North Carolina for consideration of sanctions and damages pursuant to Section 110(i). The Court will also send a copy of this opinion to the United States Bankruptcy Court for the Northern District of Illinois to determine if Dunn's actions violated an injunction previously issued by that Court against Dunn, and will send a copy of this opinion to the Guilford County District Attorney's Office in Greensboro, North Carolina, to consider if criminal prosecution is warranted for the unauthorized practice of law.

**I. BACKGROUND**

Dunn operates a consumer credit counseling business in Chicago, Illinois. One of Dunn's former customers recommended Dunn to the Debtor, a resident of Greensboro, North Carolina. After the Debtor inquired about Dunn's services, the Debtor agreed to pay Dunn \$149.00 to complete his bankruptcy petition and the accompanying schedules and forms. Under that agreement, the

Debtor was to supply Dunn with all of his financial information. Dunn was to insert that information in the appropriate places on the official bankruptcy forms and mail the completed petition back to the Debtor for filing. On at least two occasions, Dunn telephoned the Debtor to ask follow-up questions.

In the Debtor's original Chapter 7 petition, Dunn completed a schedule of exemptions but cited Illinois law in support of the Debtor's claimed exemptions even though the Debtor had not been a resident of Illinois in the six months before the filing of the petition.<sup>1</sup> Dunn also neglected to include a statement of the Debtor's intention with respect to his property, purportedly because the Debtor had nothing to declare. After the Debtor received notice of those two deficiencies by the Clerk's office, the Debtor informed Dunn, and Dunn provided the Debtor with a completed Statement of Intention and a blank Form 91C, which is required under Local Bankruptcy Rule 4003-1 to claim exemptions in property. The Debtor then completed the values for the property that he was claiming as exempt. On September 29, 2004, the Debtor filed a Statement of Intention, which had been completed by Dunn, and a local Form 91C, which was sent to him by Dunn.

In actuality, the Debtor's Chapter 7 bankruptcy was relatively uncomplicated inasmuch as the Debtor did not have any real property or secured creditors; the Debtor's only liabilities were unsecured, non-priority debts. According to the Debtor's testimony, all he did was supply Dunn a copy of his financial information and liabilities; Dunn made the decision on how to classify the particular creditor and where to place that liability on the Debtor's schedules.

Dunn is not a stranger to petition preparer litigation. A cursory review of the public records by this Court revealed that in 1998 the United States Bankruptcy Court for the Northern District of Illinois assessed fines against Dunn under Section § 110 and enjoined Dunn from engaging in the unauthorized practice of law. Dunn v. Bodenstein (In re Abernathy), No. 99 C 64, slip op. at 2 (N.D. Ill. September 21, 1999). In affirming the order of the bankruptcy court on appeal, the district court noted that Dunn had been permanently enjoined from "advising, selecting, suggesting, or explaining

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<sup>1</sup> If a state has opted out of using the federal exemption statute of 11 U.S.C. § 522(d), then a debtor may claim exemptions under "State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition ...." 11 U.S.C. § 522(b)(2)(A).

which forms are required to be filed with a bankruptcy petition, what information is required on each form .... selecting ... which ... personal property exemptions are available, [and] the value or statutory basis for such exemptions.” *Id.* at 6. Likewise, Dunn was permanently enjoined from “advising on or classifying debts.” *Id.* Apparently, Dunn remained recalcitrant because as recently as September 22, 2004, the United States Bankruptcy Court for the Northern District of Illinois entered an order declaring that Dunn had engaged in the unauthorized practice of law, and this time the court permanently enjoined Dunn from acting as a bankruptcy petition preparer. Bodenstein v. Dunn (In re Lindsey), No. 03 B 47256 (Bankr. N.D. Ill. September 22, 2004).

## II. DISCUSSION

The Bankruptcy Administrator requested that Dunn appear at a show cause hearing to determine, inter alia, if Dunn had engaged in the unauthorized practice of law, engaged in any deceptive act, or charged an excessive fee for his services when he prepared the Debtor’s Chapter 7 bankruptcy petition.<sup>2</sup>

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<sup>2</sup> The Bankruptcy Administrator also specifically requested the Court to determine if Dunn had misrepresented his experience and education as a bankruptcy petition preparer, and the Bankruptcy Administrator argued at the close of the evidence that Dunn’s social security number was invalid, which constituted a violation of 11 U.S.C. § 110(c). No evidence was presented to the Court on either issue.

Additionally, the Bankruptcy Administrator wanted to determine, in an omnibus manner, if Dunn had violated any of the provisions of 11 U.S.C. § 110. Most of the prohibitions in that statute can be dealt with in a summary fashion. The evidence presented demonstrates that Dunn signed the Debtor’s petition and printed his name and address pursuant to Section 110(b). Likewise, Dunn furnished a copy of the petition to the Debtor in accordance with Section 110(d), he did not execute any document on behalf of the Debtor as proscribed by Section 110(e), and no evidence was presented that Dunn advertised using the word “legal” or similar type terms in violation of Section 110(f) or that Dunn collected filing fees from the Debtor as proscribed in Section 110(g). Dunn also timely complied with the requirements in Section 110(h) that he disclose the fees that he received from the Debtor. Accordingly, the only issues in contention by the Bankruptcy Administrator on which evidence was presented that might entitle the Bankruptcy Administrator to relief are whether Dunn engaged in the unauthorized practice of law, whether he committed a deceptive act under Section 110(i), and whether he charged excessive fees for his services pursuant to Section 110(h)(2).

### **A. Unauthorized Practice of Law**

The Bankruptcy Administrator argues that Dunn engaged in the unauthorized practice of law when he used his discretion, experience, and/or knowledge in completing the Debtor's Chapter 7 bankruptcy petition and schedules and provided something more than a mere typing service. The Bankruptcy Administrator also notes that Dunn provided Form 91C to the Debtor.

Persons other than members of the North Carolina State Bar are prohibited from practicing law in this State. N.C. Gen. Stat. § 84-4. The practice of law specifically includes performing any legal service for another person, preparing petitions, or assisting by advice, counsel, or otherwise in any legal work. N.C. Gen. Stat. § 84-2.1.<sup>3</sup> A person who engages in the unauthorized practice of law is subject to criminal prosecution for a class 1 misdemeanor, N.C. Gen. Stat. § 84-8, which is prosecuted by the local district attorney. N.C. Gen. Stat. § 84-7 ("The district attorney ... shall ... indict any person ... upon the receipt of information of the violation of the provisions of G.S. 84-4 ...."); Disciplinary Hearing Comm'n of the N.C. State Bar v. Frazier, 556 S.E.2d 262, 264 (N.C. 2001)(criminal sanctions for the unauthorized practice of law are under the exclusive control of the district attorneys). See also In re Losee, 195 B.R. 785, 786 (Bankr. M.D. Fla. 1996)(whether or not the petition preparer is guilty of the unauthorized practice of law was a question for the Florida

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<sup>3</sup> The statute provides:

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5.

N.C. Gen. Stat. § 84-2.1.

Supreme Court on recommendation of the Florida Bar – the determination of guilt is not an issue for the bankruptcy court).

Notwithstanding the nature of the statutory criminal penalties for engaging in the unauthorized practice of law, a bankruptcy court has the power to regulate the practice of law in the cases before it. United States v. Johnson, 327 F.3d 554, 560 (7<sup>th</sup> Cir. 2003) (“[A] federal court’s power to regulate and discipline attorneys ... extends to conduct by nonlawyers amounting to the practice of law without a license .... the fact that state law provides penalties for the unauthorized practice of law does not limit ... a federal court’s exercise of the inherent power to address the same problem.”), cert. denied sub. nom., Robinson v. United States, \_\_\_, U.S. \_\_\_, 124 S. Ct. 1087, 157 L. Ed. 2d 900 (2004); Lucas v. Nickens (In re Lucas), 312 B.R. 559, 573-74 (Bankr. D. Md. 2004)(same). Moreover, ensuring that non-attorneys do not engage in the practice of law is a core matter under 28 U.S.C. § 157(b)(2)(A) inasmuch as policing “professionals” to whom debtors pay to render services in connection with a case is a matter that intimately “concerns the administration of an estate.” See also 11 U.S.C. § 110(k) (nothing in Section § 110 of the Bankruptcy Code regulating the practices of petition preparers is to be “construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.”); McDow v. We the People Forms & Serv. Ctrs., Inc. (In re Douglas), 304 B.R. 223, 232 (Bankr. D. Md. 2003) (“There can be no more fundamental exercise of core subject matter jurisdiction by the bankruptcy court than its policing of professionals whom debtors pay to render services in connection with their cases.”).

Having determined that this Court has the power to prohibit the unauthorized practice of law in cases that arise before it, the Court must now determine what activities are appropriate for a petition preparer and what activities are proscribed as constituting the unauthorized practice of law.

Not all activities of a petition preparer will constitute the practice of law inasmuch as 11 U.S.C. §§ 110(a) and (h) implicitly allow a person to prepare bankruptcy documents for signing and even allow that person to receive reasonable compensation for providing that service. The practice of preparing bankruptcy petitions, however, is perilous to the non-attorney because once the preparer exceeds the bounds of being a mere scrivener – to exercise discretion in providing guidance or advice – the preparer is in contravention of state laws regulating the practice of law. In re Schneider,

271 B.R. 761, 764-65 (Bankr. D. Vt. 2002)(the petition preparer “moves at his or her own peril when performing any services beyond that of simply typing the information provided by a prospective debtor on approved bankruptcy forms.”). See also In re Graham, Nos. 02-81930C-7D, 02-82065C-7D, 2004 Bankr. LEXIS 1678 at \*25-26 (Bankr. M.D.N.C. 2004)(same); In re Gutierrez, 248 B.R. 287, 298 (Bankr. W.D. Tex. 2000)(same). Thus, a petition preparer engages in the unauthorized practice of law when the preparer chooses the forms for a debtor and directs their completion. Taub v. Weber, 366 F.3d 966, 969 (9<sup>th</sup> Cir. 2004)(rejecting an argument that the preparer simply followed the instructions on the official bankruptcy forms and was acting as a simple layman without exercising discretion, finding that the preparer exercised his “professional judgment” to address his customer’s individual needs); Gutierrez, 248 B.R. at 297-98 (even telling the debtor where the information goes on the official forms is not permitted under the applicable unauthorized practice of law statute).

In this matter, Dunn signed a declaration certifying that he was a petition preparer, and the Debtor testified that all he did was to supply Dunn with a copy of his financial paperwork. Dunn made the decisions concerning whether the Debtor’s liabilities were secured, priority, or unsecured debts. Dunn further claimed Illinois exemptions on behalf of the Debtor, and then provided the Debtor with the relevant local form to use for claiming North Carolina exemptions when the Debtor was ignorant of the proper paperwork that needed to be completed and filed. Based on the facts of this case, and the guidelines of N.C. Gen. Stat. § 84-2.1, the Court is convinced that Dunn did not act as a mere scrivener, and that he engaged in the practice of law in his preparation of the Debtor’s petition and schedules inasmuch as Dunn chose the correct forms to be filed with the Debtor’s petition, assisted the Debtor by classifying debts on his schedules, and chose – wrongfully – Illinois law exemptions for the Debtor.

#### **B. Deceptive Acts**

The Bankruptcy Administrator requested a show cause order, in part, to determine if Dunn had engaged in any deceptive act or practice proscribed by 11 U.S.C. § 110(i).

Section 110(i) of the Bankruptcy Code states that “if a bankruptcy petition preparer ... commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court ....” An “unfair” or “deceptive act” is not specifically defined in the Bankruptcy Code,

but under North Carolina law, an act is “deceptive if it has the tendency to deceive.” Gray v. North Carolina Ins. Underwriting Ass’n, 529 S.E.2d 676, 681 (N.C. 2000). “Deceit” is defined as “the act of intentionally giving a false impression.” Black’s Law Dictionary 435 (8<sup>th</sup> ed. 2004). By analogy, a party states a cause of action under North Carolina law for a violation of the unfair and deceptive trade practices statute when: (1) the party shows an unfair or deceptive act, (2) in or affecting commerce, which (3) proximately caused injury to the complaining party. Country Club of Johnson County, Inc. v. U.S. Fid. & Guar. Co., 563 S.E.2d 269, 278 (N.C. 2002). See also N.C. Gen. Stat. § 75-1.1 (“[U]nfair or deceptive trade practices in or affecting commerce, are declared unlawful.”).

In the context of petition preparer litigation, other courts have determined that a petition preparer who engages in the unauthorized practice of law commits an unfair or deceptive act pursuant to 11 U.S.C. § 110(i), and that the conduct may also subject the petition preparer to an injunction under Section 110(j) for engaging in “fraudulent, unfair or deceptive conduct.” See, e.g., In re Moore, 283 B.R. 852, 857 (Bankr. E.D.N.C. 2003)(“[T]he giving of legal advice by a non-attorney constitutes an unfair practice and may be a criminal act .... courts ... have the ability to enjoin unfair and deceptive acts.”); In re Davenport, No. 99-01068-5-ATS, 1999 Bankr. LEXIS 2003 (Bankr. E.D.N.C. 1999)(stating that unfair and deceptive acts included “assisting the debtor in selecting exemptions ... and advising the debtor on how to treat her secured claims,” and that the petition preparer committed a fraudulent, unfair, and deceptive act by giving legal advice to a debtor). Some courts have determined that the unauthorized practice of law is by definition an unfair and deceptive act. Moore v. Jencks (In re Moore), 232 B.R. 1, 8 (Bankr. D. Me. 1999)(“I hold without qualification that a bankruptcy petition preparer’s unlawful dispensation of legal advice constitutes a ‘fraudulent, unfair, or deceptive act’ within the meaning of § 110(i)(1).”). Others have required some other culpability on behalf of the petition preparer. In re Chamberland, 190 B.R. 972, 978 (Bankr. M.D. Fla. 1996)(approving a request to certify the record to the Florida Bar to investigate the unauthorized practice of law, but denying certification under 11 U.S.C. § 110(i) because the evidence did not support the findings that the petition preparer engaged in a fraudulent, unfair, or deceptive act). Under either standard, Dunn’s conduct constitutes a deceptive act.

As explained above, Dunn has engaged in the unauthorized practice of law before this Court. Dunn cannot argue that he was without knowledge that his actions were wrongful because, in plain

language, the United States Bankruptcy Court for the Northern District of Illinois instructed Dunn concerning the activities from which he is prohibited in engaging, which includes a permanent injunction from “advising, selecting, suggesting, or explaining which forms are required to be filed with a bankruptcy petition, what information is required on each form .... selecting ... which ... personal property exemptions are available, the value or statutory basis for such exemptions .... and from advising on or classifying debts.” Abernathy, No. 99 C 64, slip op. at 6 (N.D. Ill. September 21, 1999). Nevertheless, Dunn chose to hold himself out to the Debtor as a person authorized to exercise discretion in preparing the Debtor’s bankruptcy petition and to act in a manner inconsistent with that of a mere scrivener. Based on Dunn’s representations to the Debtor, the Debtor chose to hire Dunn to perform bankruptcy services. In short, Dunn chicaned the Debtor into believing that Dunn could take care of the Debtor’s legal problems despite not being licensed to practice law and notwithstanding the fact that Dunn had been previously enjoined from undertaking such actions; thus, Dunn committed a deceptive act within the meaning of 11 U.S.C. § 110(i).

### **C. Excessive Fees**

The Bankruptcy Administrator argued that the fees that Dunn charged the Debtor were in excess of the fees allowed for typing services in this jurisdiction.

Section 110(h)(2) provides that a court “shall disallow and order the immediate turnover to the bankruptcy trustee of any fees ... found to be in excess of the value of services rendered for the documents prepared.” The petition preparer has the burden of proving the reasonableness of the fees charged. Bodenstein v. Shareef (In re Steward), 312 B.R. 172, 175-76 (Bankr. N.D. Ill. 2004); In re Graham, No. 02-81930C-7D, 2004 Bankr. LEXIS 1678 at \*27 (Bankr. M.D.N.C. 2004); In re Haney, 284 B.R. 841, 850-51 (Bankr. N.D. Ohio 2002).

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 a petition preparer is entitled to compensation. This district uses the analogy that the fee that is proper for a petition preparer is analogous to what a professional typist would charge because their services are most comparable to what a petition preparer is authorized to do. Graham, 2004 Bankr. LEXIS 1678 at \*29; In re Moore, 283 B.R. 852, 859 (Bankr. E.D.N.C. 2002). Approximately \$80.00 is reasonable compensation for typing a bankruptcy petition in this district. Graham, 2004 Bankr.



LEXIS 1678 at \*29 (finding that \$80.00 was the appropriate sum taking into account that the case prepared was "routine" inasmuch as the debtor had no real property, very little personal property, and relatively few debts). Under the precedent in this District, had Dunn acted appropriately as a petition preparer and not a practitioner of the law, the Court would have reduced Dunn's fees from \$149.00 to \$80.00 inasmuch as, like Graham, the Debtor had no real property, relatively little personal property, and relatively few debts, none of which required extensive typing services.

The Court notes, however, that a contract to provide legal services by one who is not licensed to practice law is against public policy and void.<sup>4</sup> See, e.g., Pryor v. NCAA, 288 F.3d 548, 570 (3<sup>rd</sup> Cir. 2002)(providing that courts will not enforce contracts that are contrary to public policy, such as when a contract term contravenes a principle of law enumerated by the Constitution, state, or federal law). See also Restatement (Second) Contracts § 178 ("A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms."). A party rendering performance of a contract that is void for public policy reasons generally is not entitled to restitution. Restatement (Second) Contracts § 197 ("[A] party has no claim in restitution for performance that he has rendered under or in return for a promise that is unenforceable on grounds of public policy unless denial of restitution would cause disproportionate forfeiture.").

Here, the Bankruptcy Administrator, who has the statutory right to appear and be heard on any issue under 11 U.S.C. § 307, questioned the validity of Dunn's fees and demonstrated at the show cause hearing that Dunn's contract with the Debtor is in contravention of North Carolina's unauthorized practice of law statute. Because Dunn's petition preparer contract with the Debtor is void in contravention of public policy, the fee rendered is per se excessive. See, e.g., Taub, 366 F.3d at 968, 971 (affirming an order of the bankruptcy court disgorging fees earned in the unauthorized practice of law); Brown v. Goode, Peterson & Hemme (In re Brown), 270 B.R. 43, 52 (Bankr. D. S.C. 2001)(ordering disgorgement because it would be anomalous to permit the defendant to retain a fee for unauthorized services). See also In re Chojewski, No. 99-18145, 2000 U.S. Dist. LEXIS

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<sup>4</sup> In this instance, Dunn not only is not licensed to practice law, he has been permanently enjoined from the unauthorized practice of law by another court.

6962 at \*9 (E.D. Pa. 2000)(“Once a [bankruptcy] court determines that a non-attorney has engaged in the unauthorized practice of law, it may order disgorgement of all fees resulting from the unlawful practice.”); Patton v. Scholl, No. 98-5729, 1999 U.S. Dist. LEXIS 9607 at \*35-36 (E.D. Pa. 1999)(same); Tighe v. Mora (In re Nieves), 290 B.R. 370, 379-80 (Bankr. C.D. Cal. 2003)(same); Staiano v. File Aid (In re Bradshaw), 233 B.R. 315, 330 (Bankr. D. N.J. 1999)(same); In re Soulisak, 227 B.R. 77, 82 (Bankr. E.D. Va. 1998)(same). Dunn did not appear to defend his fee at the show cause hearing and has made no showing that disgorgement of his fee would cause a disproportionate forfeiture in comparison with the services that he rendered to the Debtor. For this reason, the Court finds Dunn’s \$149.00 fee to be excessive under 11 U.S.C. § 110(h)(2).

#### **D. Disgorgement and Referrals**

Having determined that Dunn engaged in the unauthorized practice of law when he prepared the Debtor’s Chapter 7 bankruptcy petition – violating the proscription against the unauthorized practice of law and violating 11 U.S.C. § 110(i)(1) by committing a deceptive act – and determining that the fee Dunn charged the Debtor for his services was excessive, the Court must determine the consequences of Dunn’s actions.

##### **1. Disgorgement**

As stated supra, Dunn is not licensed to practice law and his contract with the Debtor, which required Dunn to practice law in preparing documents for filing in the Debtor’s bankruptcy case, is void as being contrary to public policy. Therefore, the Court will require Dunn to disgorge the \$149.00 that he charged the Debtor for “petition preparer” services.

##### **2. Violation of § 110(i)(1)**

Regarding Dunn’s deceptive act in violation of Section 110(i)(1), the Bankruptcy Code provides the appropriate course of action. The Court is to certify the deceptive act to the district court, where on motion of the debtor, the trustee, or a creditor, Dunn may be made to pay, inter alia, the Debtor’s actual damages, if any, up to \$2,000.00, and reasonable attorney’s fees and costs. 11 U.S.C. § 110(i)(1). Pursuant to that Section, the Court will certify Dunn’s deceptive act to the United States District Court for the Middle District of North Carolina.

##### **3. Violation of Injunction**

The United States Bankruptcy Court for the Northern District of Illinois has issued two

unlimited, permanent injunctions against Dunn. In 1998, that Court permanently enjoined Dunn from engaging in the unauthorized practice of law. In 2004, that Court permanently enjoined Dunn from acting as a petition preparer.

Civil contempt is a tool of the court “to punish someone who shows contempt for the process, orders, or proceedings of that institution.” Black’s Law Dictionary, 337 (8<sup>th</sup> ed. 2004). A court employs contempt proceedings to coerce a party into compliance with the court’s order and to compensate other parties for losses sustained. United States v. United Mine Workers, 330 U.S. 258, 303-04 (1947).

In this matter, the Bankruptcy Court for the Northern District of Illinois has permanently enjoined Dunn from the unauthorized practice of law, and more recently, permanently enjoined Dunn from even acting as a petition preparer. That Court has more familiarity with the conduct of Dunn giving rise to the permanent injunctions and that Court has the most interest in seeing that its orders are given the proper authority and dignity. Accordingly, this Court will send a copy of this opinion to the United States Bankruptcy Court for the Northern District of Illinois for a determination of whether Dunn’s conduct in this matter has violated the injunctions issued by that Court and to determine what, if any, sanctions are appropriate.<sup>5</sup>

### III. CONCLUSION

Based on the evidence presented at the Bankruptcy Administrator’s show cause hearing, the Court finds that Dunn engaged in the unauthorized practice of law when he completed the Debtor’s Chapter 7 bankruptcy petition because Dunn did not act as a mere scrivener – he exercised discretion and provided the Debtor with legal services. Dunn knew that his conduct in this case was proscribed because the United States Bankruptcy Court for the Northern District of Illinois has plainly explained to Dunn that he was permanently enjoined from engaging in the unauthorized practice of law and that Court illustrated for him what activities were proscribed. Despite the fact that Dunn knew that his actions in this matter were proscribed, Dunn nevertheless chicaned the Debtor into believing that Dunn was authorized to undertake his actions in this case, which constituted a deceptive act pursuant

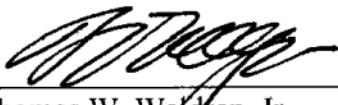
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<sup>5</sup> This Court would have enjoined Dunn from acting as a petition preparer. Considering the scope of the injunctions issued against Dunn by the United States Bankruptcy Court for the Northern District of Illinois, however, any injunction issued by this Court would merely be cumulative.

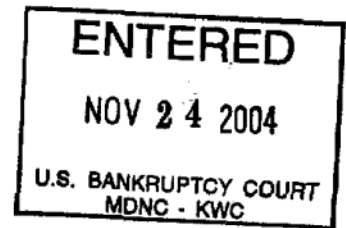
to 11 U.S.C. § 110(i). Based on Dunn's actions, the Court will require Dunn to disgorge the \$149.00 fee that Dunn charged the Debtor for his services, certify this case to the United States District Court for the Middle District of North Carolina for consideration of sanctions and damages pursuant to Section 110(i), send a copy of this opinion to the United States Bankruptcy Court for the Northern District of Illinois to determine if Dunn's actions violated the injunctions issued by that Court, and send a copy of this opinion to the Guilford County District Attorney's Office in Greensboro, North Carolina, to consider if criminal prosecution is warranted for the unauthorized practice of law.

This memorandum opinion constitutes the Court's findings of fact and conclusions of law. A separate order shall be entered contemporaneously herewith pursuant to Fed. R. Bankr. P. 9021.

**ENTERED** this 14 day of November 2004.

  
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Thomas W. Waldrep, Jr.  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**



IN RE:	)	
	)	
TERRENCE HOWERTON	)	CASE NO. 04-12819
	)	
Debtor.	)	Chapter 7
	)	

**ORDER**

Pursuant to the memorandum opinion entered contemporaneously herewith, it is

**ORDERED** that the fee paid by Terrence Howerton to Eddie Dunn, in the sum of \$149.00, be and hereby is disgorged in its entirety and that Eddie Dunn shall pay that amount to Terrence Howerton's Chapter 7 Trustee, Charles M. Ivey, III, P.O. Box 1828, Greensboro, North Carolina 27402, within thirty days of service of this Order in the form of a cashier's check, money order, or other certified funds. It is

**FURTHER ORDERED** that the following facts be and hereby are certified to the United States District Court for the Middle District of North Carolina pursuant to 11 U.S.C. § 110(I):

A. Eddie Dunn prepared documents to be filed in this case on behalf of Terrence Howerton and is a bankruptcy petition preparer as defined by Section 110(a).

B. Eddie Dunn's actions in preparing Terrence Howerton's Chapter 7 petition, as more fully described in the memorandum opinion filed contemporaneously herewith, constituted the unauthorized practice of law.

C. Eddie Dunn's actions in preparing Terrence Howerton's Chapter 7 petition, as more fully described in the memorandum opinion filed contemporaneously herewith, constituted an unfair or deceptive act within the meaning of Section 110(I). It is

**FURTHER ORDERED** that this matter be and hereby is referred to the United States Bankruptcy Court for the Northern District of Illinois for a determination of whether Eddie Dunn's actions in this matter constituted violations of permanent injunctions issued by that Court against Eddie Dunn, and for a determination of what sanctions, if any, are appropriate. It is

**FURTHER ORDERED** that this matter be and hereby is referred to the Guilford County District Attorney's Office for the State of North Carolina for a determination of whether Eddie Dunn

committed a criminal act in the State of North Carolina by engaging in the unauthorized practice of law as is proscribed by N.C. Gen. Stat. § 84-8.

**SO ORDERED** this 21 day of November 2004.

A handwritten signature in black ink, appearing to read 'T. Waldrep, Jr.', written over a horizontal line.

Thomas W. Waldrep, Jr.  
United States Bankruptcy Judge