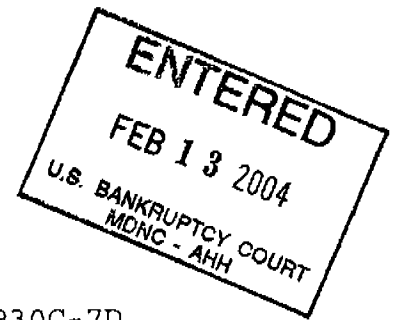


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:)

Victor Euglous Graham,)
)
Debtor.)

✓ Case No. 02-81930C-7D

Julie R. Kendrick,)
)
Debtor.)

Case No. 02-82065C-7D

MEMORANDUM OPINION

These cases are before the court pursuant to show cause orders directed to Charlie Anderson, d/b/a We the People Document Services, which were issued at the request of the Bankruptcy Administrator. Charles F. Vihon, Richard Lubetzky and Samuel J. Randall, IV appeared on behalf of Charlie Anderson ("Mr. Anderson"), Robyn C. Whitman appeared on behalf of the Bankruptcy Administrator and Harriet F. Worley and Leonard G. Green appeared on behalf of the Attorney General of North Carolina.

PROCEDURAL BACKGROUND

These Chapter 7 cases were filed on June 27, 2002, and July 11, 2002, respectively. In each case, the petition was signed by the Debtor and states that the Debtor is not represented by an attorney. In addition to being signed by the Debtor, the petitions were signed by Charlie Anderson who is identified in the petitions as a non-attorney petition preparer. The motions that initiated this proceeding were filed by the Bankruptcy Administrator and

request that the court order a hearing regarding Mr. Anderson's activities and fee as a petition preparer. In response to the Bankruptcy Administrator's motion, an order was entered on July 12, 2002, directing that Mr. Anderson appear before the court for a determination of whether Mr. Anderson had violated any of the provisions of the Bankruptcy Code or Rules and for a determination of the propriety, reasonableness, and adequacy of any services rendered and compensation received by Mr. Anderson in connection with this case ("the Hearing Order").

Following a continuance of the hearing as originally scheduled, Mr. Anderson appeared before the court with his attorneys, on August 15, 2002, at which time the court conducted a pre-trial hearing. Following the pre-trial hearing, an order was entered rescheduling the hearing pursuant to the Hearing Order for October 24, 2002, in order to allow the parties time for the filing of any motions pertaining to the hearing called for under the Hearing Order and in order to provide the parties with an opportunity to conduct any discovery needed in order to prepare for hearing.

On September 27, 2002, a motion to intervene in this proceeding was filed by the Attorney General of North Carolina. Following a hearing on October 24, 2002, regarding the motion to intervene, the motion to intervene was granted and the Attorney General for the State of North Carolina was permitted to intervene

in this proceeding. At the same time, the court granted the parties additional time for discovery to and including December 31, 2002, and scheduled the hearing pursuant to the Hearing Order for January 16, 2003. Thereafter, the court granted a joint motion by the parties to extend the time for discovery through January 31, 2003, and rescheduled the hearing pursuant to the Hearing Order for February 13, 2003. A hearing pursuant to the Hearing Order was held on February 13, 2003. Because the evidence was not completed on that date, further hearings were held on April 25, 2003, and May 9, 2003, on which date the hearing was completed. At the conclusion of the hearing, the court established a schedule for the filing of post-hearing briefs. Such briefs have now been filed and the issues involving Mr. Anderson are now before the court for determination.

JURISDICTION

The court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334, and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This proceeding 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).

FACTUAL BACKGROUND

Mr. Anderson maintains a place of business in Raleigh, North Carolina, where he conducts business under the name, We The People Document Services. Mr. Anderson is a franchisee of We The People Forms and Service Centers, USA, Inc. (We The People USA). The franchise agreement describes the franchised business as "a business that provides paralegal document preparation services." The services provided by Mr. Anderson include typing various legal documents on forms supplied by Mr. Anderson and providing written materials to customers to assist them with the preparation of such forms. At the time of the transactions involving the Debtors in the present cases, the services provided by Mr. Anderson also included a "supervising attorney", who Mr. Anderson represented was available to "chat" with customers if they had questions regarding the documents offered by Mr. Anderson. The forms available from Mr. Anderson included forms for divorce, wills, incorporation, living trusts, as well as bankruptcy, all of which were offered at Mr. Anderson's place of business in Raleigh.

Mr. Graham came to Mr. Anderson's place of business on June 19, 2002, after having earlier consulted an attorney about filing for bankruptcy and apparently after having decided to file a Chapter 7 case. According to Mr. Graham, he went to Mr. Anderson's place of business after seeing Mr. Anderson's price of \$199.00 for bankruptcy which was displayed in the window of

Mr. Anderson's business location and comparing that price to the attorney's price of \$1,200.00. After talking with Mr. Anderson on June 19, 2002, the Debtor paid his fee of \$199.00 and received from Mr. Anderson a Customer Information Workbook, a pamphlet entitled Bankruptcy Overview which contained information regarding Chapter 7 bankruptcy and a Step By Step Guide to the Bankruptcy Workbook which contained instructions regarding the manner in which the Customer Information Workbook should be completed by the Debtor. Mr. Graham signed a Bankruptcy Document Preparation Agreement on June 19, 2002, on a form supplied by Mr. Anderson. This agreement provides, inter alia, that "I hereby retain the services of *We The People* to type bankruptcy forms for me" and reflects that the Debtor had paid \$199.00 for "Document Typing" and \$15.00 for "photocopying."

On June 24, 2002, the Debtor returned to Mr. Anderson's place of business with the completed workbook which was delivered to Mr. Anderson. Mr. Graham talked by telephone with the supervising attorney prior to completing and returning the workbook. After reviewing the workbook for legibility and completeness, and obtaining an account number from the Debtor which had been omitted, Mr. Anderson faxed the workbook to a *We The People USA* location in Nevada in order for the information contained in the workbook to be typed in the format of the Official Forms for the bankruptcy petition, schedules, statement of financial affairs and other

documents required for a Chapter 7 filing. After the bankruptcy forms were typed at the Nevada location, the completed forms were sent by electronic mail to Mr. Anderson at his place of business in Raleigh on June 26, 2002. Upon receipt of the forms, Mr. Anderson notified the Debtor that the typed forms had been received and the forms were picked up by Mr. Graham and filed with the court on June 27, 2002. There were no significant differences in the transaction involving Ms. Kendrick, although her transaction included some telephone discussions and the transmittal of some of the documents between her and Mr. Anderson was handled by mail. However, the documents supplied to her by Mr. Anderson were the same as those supplied in the Graham case.

DISCUSSION

The issues to be resolved in this proceeding arise under § 110 of the Bankruptcy Code which regulates the conduct of bankruptcy petition preparers. Congress enacted § 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. 2003) (citing S.Rep. No. 103-168, 103rd Cong., 1st Sess 51 (1993)). The enactment of § 110 was intended as a consumer protection measure to protect individuals from unfair or deceptive conduct on the part of petition preparers not employed by or supervised by an attorney. Section 110 requires petition preparers to take certain actions and proscribes other

conduct on their part, while adding sanctions for noncompliance and mechanisms for court oversight.

A. Is Mr. Anderson subject to the provisions of § 110?

Section 110(a)(1) defines a petition preparer as "a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing." Under Section 110(a)(2), a document for filing means "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 Debtors paid Mr. Anderson to have the petition, schedules, statement of financial affairs and other documents that were filed in their cases typed and that Mr. Anderson arranged to have such documents typed on forms supplied by or on behalf of Mr. Anderson. These facts establish that Mr. Anderson "prepared" documents for filing in a bankruptcy case and that he, therefore, is a "bankruptcy petition preparer" for purposes of § 110 since he is neither an attorney nor an employee of an attorney. This conclusion is confirmed by the certification contained in the petitions in which Mr. Anderson himself certifies that "I am petition preparer as defined in 11 U.S.C. § 110 [and] I prepared this document for compensation . . ." It follows that Mr. Anderson is subject to the provisions of § 110 of the Bankruptcy Code and hence required to comply with the provisions of § 110.

In concluding that Mr. Anderson is required to comply with the requirements contained in § 110, the court rejects the argument by Mr. Anderson that § 110 is unconstitutional. Arguments that § 110 is unconstitutional as exceeding Congress's power to regulate bankruptcy under the Bankruptcy Clause, that § 110 unconstitutionally restricts a petition preparer's First Amendment speech rights and that § 110 is unconstitutionally vague and overbroad have been uniformly rejected. See In re Crawford, 194 F.3d 954 (9th Cir. 1999), cert. denied, 528 U.S. 1189, 120 S.Ct. 1244, 146 L.Ed.2d 102 (2000); In re Doser, 292 B.R. 652, 656-58 (D. Idaho 2003).

The court also rejects the argument that the determination of whether a petition preparer has violated the provisions of § 110(b) through § 110(h) must be made by the district court rather than the bankruptcy court. Section 110(i) provides that "if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court" (Emphasis supplied). Under this provision, the bankruptcy court is required to certify to the district court any violation of § 110 by a petition preparer. In order to make such a certification, the bankruptcy court necessarily must determine whether a violation of § 110 by a petition preparer, in fact, has occurred.

The court further concludes that the bankruptcy court likewise is authorized to impose the fine provided for in the second subparagraphs of § 110(b) through § 110(g) in the event a petition preparer is found to have violated these provisions, as well as to order pursuant to § 110(h)(2) that any excessive fees collected by a petition preparer be turned over to the trustee. The argument that only the district court can make such an order is rejected. The nature of the relief that must be provided by the district court is described in § 110(i)¹ and does not include imposition of the fine provided for in the second subparagraph of § 110(b) through § 110(g), nor the turnover relief provided for in § 110(h)(2) which are left to the bankruptcy court. Accordingly, the court will proceed with a determination of whether Mr. Anderson complied with the provisions of § 110(b) through § 110(h).

B. Did Mr. Anderson Comply with Subparagraphs
(b) and (c) of § 110?

Subparagraphs (b) and (c) of § 110 require that a petition

¹Section 110(i), in pertinent part, provides that the district court:

shall order the bankruptcy petition preparer to pay to the debtor . . . (A) the debtor's actual damages; (B) the greater of (i) \$2,000.00; or (ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and (C) reasonable attorneys' fees and costs in moving for damages under this subsection If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000.00 plus reasonable attorneys' fees and costs incurred.

preparer sign the documents prepared by a petition preparer and that the petition preparer include certain information on such documents. These provisions are mandatory and not a mere technicality. Under § 110(b)(1) a petition preparer must "sign the document and print on the document the preparer's name and address." Section 110(c) mandates that the petition preparer place on the document, after the preparer's signature, the social security number of each individual who prepared the document or assisted in its preparation. Although Mr. Anderson's name, address and social security number were placed on filed documents in these cases, Mr. Anderson nonetheless failed to comply with the requirements of subparagraphs (b) and (c) of § 110 because the requirement is that all persons who prepared the document be disclosed. The evidence clearly and convincingly established that there were other entities or persons who were involved with and assisted in preparing the documents. The identity and social security numbers of those parties should have been, but were not, placed on the documents in these cases as required under § 110(b) and (c). It is undisputed that none of the documents were prepared in Mr. Anderson's office or by Mr. Anderson himself. Instead, after the workbooks were returned to Mr. Anderson's office in Raleigh, Mr. Anderson faxed the completed workbooks to a We The People USA location in Nevada where a typist employed by We The People USA typed the information contained in the workbooks into

the format for Official Forms for the bankruptcy petition, schedules, statement of financial affairs and related documents in these cases and then transmitted the completed forms by electronic mail to Mr. Anderson at his business location in Raleigh. This procedure was dictated by the franchise agreement between Mr. Anderson and We The People USA which requires that all documents be prepared by the franchisor. Thus, We The People USA and its typist prepared or assisted in the preparation of the documents that were filed in this case. As a result, Mr. Anderson was required to place the names and identifying numbers of We The People USA and its typist on the documents that he was paid to type and which were filed in this case, and his failure to do so means that he failed to comply with subparagraphs (b) and (c) of § 110. See In re Doser, 281 B.R. 292, 303-04 (Bankr. D. Idaho 2002) (We The People franchisee and franchisor engaged in a joint enterprise in preparing bankruptcy forms and both are petition preparers for purposes of § 110); In re Moore, 283 B.R. 852, 857-58 (Bankr. E.D.N.C. 2002).

C. Fine for Violating Subparagraphs
(b) and (c) of § 110.

Subsections (b) and (c) of § 110 each contain a subparagraph which provides that a bankruptcy petition preparer who fails to comply with subparagraph (1) of subsections (b) and (c) "may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause." The use of "may" in this provision

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 the cases now before the court, multiple violations occurred because there were five documents in each case that did not contain the information required under subsections (b) and (c) of § 110 and each document not containing the required information gives rise to separate violations. See In re Hartman, 208 B.R. 768, 776-77 (Bankr. D. Mass. 1997) ("any fines provided for by § 110 apply to each 'document for filing' that the Defendant prepared for the Debtor."). This means that there were five violations of §110(b) and five violations of § 110(c) in each case now before the court.

Before any fine is imposed, however, the court must decide whether the failure to comply was due to reasonable cause. Section 110 does not contain a definition of reasonable cause. The criterion that has been utilized in some of the cases involving § 110, and which will be used in the cases now before the court, is that reasonable cause "exists where the violation is unavoidable through no fault of the violator." Hartman, 208 B.R. at 778. There was no showing in the present cases that Mr. Anderson's failure to comply with subsections (b) and (c) was unavoidable through no fault of his own. In each of these cases, Mr. Anderson signed as petition preparer on six different documents, each of

which contained the following language in very close proximity to where he signed: "Names and Social Security number of all other individuals who prepared or assisted in preparing this document:", which was followed by a blank space for the additional names and social security numbers to be inserted. Immediately below the blank space left for any additional names and Social Security numbers, appears the following additional language: "If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person." Thus, even if Mr. Anderson was not aware of exact provisions of § 110 when these cases were filed, he nonetheless was informed by clear language appearing on the official forms of the requirement of including the name and Social Security number for each person who prepared or assisted in the preparation of the documents filed in these cases. The court, therefore, concludes that Mr. Anderson should be fined in each of these cases.

Remaining for determination is the amount of the fines that should be imposed. In setting the amount of the fines in these cases, the court takes into consideration that no explanation was offered for the failure to comply with the requirements that clearly were stated on the very forms signed by Mr. Anderson and that the effect of the failure to comply was to conceal from the court and the Debtors the involvement of We The People USA in the preparation of the documents. Taking these and the other

circumstances of these cases into account, the court concludes that in each of these cases a fine of \$50.00 should be imposed for each violation of § 110(b) and \$50.00 for each violation of § 110(c), for a total fine of \$500.00 in each case.

D. Did Mr. Anderson Comply with Subparagraph (d) of § 110?

Under subparagraph (d) of § 110, a petition preparer is required to furnish to the debtor 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. The Bankruptcy Document Preparation Agreements between Mr. Anderson and the Debtors reflect that Mr. Anderson was charging \$199.00 for document typing and an additional \$15.00 for providing copies of the documents prepared for the Debtors. It appears that the Debtors paid both the document preparation fee and copying fee. It thus appears that Mr. Anderson supplied at least one copy of the documents to the Debtors when the original forms were delivered and thereby complied with subparagraph (d) in this case.

E. Did Mr. Anderson violate Subparagraph (e) of § 110?

Subparagraph (e) of § 110 is a prohibitory provision which provides that a petition preparer "shall not execute any document on behalf of a debtor." The petition and other documents in this case requiring the signatures of the Debtors were signed by the Debtors and not by Mr. Anderson on the Debtors' behalf.

Mr. Anderson therefore did not violate subparagraph (e).

F. Did Mr. Anderson violate subparagraph (f) of § 110?

Subparagraph (f), which also is a prohibitory provision, provides that a petition provider "shall not use the word 'legal' or any similar term in any advertisements, or advertise under any category that includes the word 'legal' or any similar term." The evidence included a number of Mr. Anderson's advertisements which have been printed in newspapers and telephone book yellow pages. The violation asserted by the Bankruptcy Administrator is that the word "lawyer" appears in some of these advertisements. The advertisements use "lawyer" in two contexts. Some of these advertisements, in promoting Mr. Anderson's prices, state "No Lawyers - Save Money" and then describe the type of documents that can be obtained from Mr. Anderson and the cost of the documents. The more recent advertisements also use the word "lawyer" through the inclusion of language at the bottom of the advertisement stating that "We The People are not lawyers and do not represent you." The more recent advertisements also include the language "We help you represent yourself with low cost, fast, accurate document preparation service." The court concludes that the narrow question of whether the advertisements violate subparagraph (f) should be answered in the negative. In these advertisements, "lawyer" is not used in a manner that suggests that Mr. Anderson is a lawyer or is acting as a lawyer or providing "legal" services such as would be

provided by a lawyer.

G. Did Mr. Anderson Violate Subparagraph (g) of § 110?

Subparagraph (g) 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 a bankruptcy case. There was no evidence that Mr. Anderson collected any such fees from the Debtors in these cases and hence no showing of a violation of this subparagraph of § 110.

H. Did Mr. Anderson Comply with Subparagraph (h) of § 110?

Subparagraph (h)(1) of § 110 directs that within ten days after a petition is filed, a petition preparer "shall 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." The information required under this provision was timely supplied by Mr. Anderson. The files in these cases include a document entitled "Disclosure of Compensation of Bankruptcy Petition Preparer" signed by Mr. Anderson under penalty of perjury which states that he agreed to accept \$214.00 for "document preparation services", that he has received \$214.00 and there is no balance due. According to the evidence, the fee charged by Mr. Anderson for document preparation was \$199.00, with the balance of the \$214.00 consisting of a \$15.00 expense charge for providing

copies of the petition, schedules, etc.

I. Did Mr. Anderson Charge a Fee in Excess
Of the Reasonable Value of the Services
Rendered?

Section 110(h)(2) provides that the court "shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared." Under § 110(h)(3), the debtor, the trustee, a creditor or the Bankruptcy Administrator "may file a motion for an order under paragraph (2)." The motion for show cause order filed by the Bankruptcy Administrator in these cases is such a motion² and the court therefore is called upon to make a determination as to whether the \$214.00 charged by Mr. Anderson in each of these cases is in excess of the value of the services provided by Mr. Anderson as petition preparer.

At the outset, it should be noted that the services for which a petition preparer may be compensated are limited to authorized services which, in fact, are performed by the petition preparer. In order for services to be authorized and hence compensable, the services must be services which the petition preparer can lawfully

²Among other things, the motion requests determine whether Mr. Anderson "has . . . been overcompensated for the services rendered as petition preparer in this case." Under the show cause order entered in response to the motion, the matters to be determined by the court include "the propriety, reasonableness, and adequacy of any services rendered and compensation received by Charlie Anderson, We The People Document Services, in this case."

perform. An important consideration in making the determination of the authorized services that were performed is whether the petition preparer has engaged in activities that constitute the unauthorized practice of law. As to the activities or services that do constitute the unauthorized practice of law, no compensation should or will be awarded.

In determining whether the petition preparer is seeking compensation for activities or services that constitute the unauthorized practice of law, it is appropriate for this court to look to North Carolina law regarding the unauthorized practice of law. See 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, 772-74 (Bankr. S.D. Fla. 1990). Mr. Anderson's contention that the court may not consider state law pertaining to the unauthorized practice of law in dealing with cases arising under § 110 is rejected. Section 110(k) specifically provides that "[n]othing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law." Hence, the court concludes that it may consider applicable North Carolina law pertaining to the unauthorized practice of law in deciding what constitutes

reasonable compensation for a petition preparer.³

In North Carolina only licensed attorneys may engage in the practice of law. N.C.G.S. § 84-4 prohibits any person or association of persons who is not admitted and licensed by the State Bar as attorneys-at-law from engaging in the practice of law in North Carolina. Under N.C.G.S. § 84-2.1, the practice of law is defined 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" Although the North Carolina courts apparently have not addressed the issue, most courts have concluded that although a non-attorney may not create a document for another person or advise on how the document should be prepared, merely typing or "scrivening" a petition or legal document for another person does not constitute the practice of law. This distinction has been made in dealing with petition preparers under § 110. For example, in In re Landry, 268 B.R. 301, 304 (Bankr. M.D. Fla.

³The court's consideration of State law pertaining to the unauthorized practice of law is not limited to determinations regarding compensation. It also is appropriate for the court to consider whether a petition preparer has given legal advice or otherwise engaged in the unauthorized practice of law in determining whether there has been a "fraudulent, unfair, or deceptive act" on the part of the petition preparer in deciding whether to make a certification to the district court pursuant to § 110(i) or whether to grant injunctive relief pursuant to § 110(j).

2001), the court stated as follows:

The type of compensable services that a bankruptcy petition preparer can render are extremely limited. Petition preparers, who by definition are not attorneys, cannot give legal advice or otherwise engage in the unauthorized practice of law Clearly, as recognized by the District Court, a bankruptcy petition preparer cannot assist the debtor in completing forms, provide legal advice that would assist a prospective debtor in making determinations as to which type of bankruptcy to file or which exemptions to take, or direct clients to particular legal publications or specific pages so that they can attempt to find legal answers on their own. The very act of directing a prospective debtor to review a particular section of a legal book in and of itself constitutes legal advice. By focusing on one answer and excluding others, the bankruptcy petition preparer steps over the line. As stated by the District Court, "Legal advice is legal advice, whether it comes directly from the petition preparer or indirectly via, for example, a bankruptcy treatise being recited by that preparer."

In accord, In re Schneider, 271 B.R. 761, 764 (Bankr. D. Vt. 2002) ("[T]he BPP moves at his or her peril when performing any service beyond that of simply typing the information provided by a prospective debtor on approved bankruptcy forms."); In re Guttierrez, 248 B.R. 287, 297 (Bankr. W.D. Tex. 2000) ("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."). Further, the fact that individuals have the right to represent themselves in a bankruptcy case and chose to do so does not result in an expansion of the type of services which can be provided by an unlicensed petition preparer:

Each citizen has the right to represent himself or herself. Pro se debtors may succeed or fail by their own lights. Debtors who seek expertise or guidance, if they are to have a fair chance at succeeding, must be guided by informed counselors for whom effective standards of practice and ethics are in place. A petition preparer may be the do-it-yourself debtor's scrivener-nothing more."

In re Moore, 232 B.R. 1, 15 (Bankr. D. Me. 1999).

To summarize, a bankruptcy petition preparer can meet a prospective debtor, provide blank bankruptcy forms for the debtor to complete without any assistance from the petition preparer, type the information on the applicable bankruptcy forms without change or alteration, copy the documents prepared for the prospective debtor and deliver the original and at least one copy of the documents to the prospective debtor. To the extent that the petition preparer performs these scrivener-type services, the petition preparer is entitled to receive reasonable compensation. See Landry, 268 B.R. at 304 ("a bankruptcy petition preparer can

expect to receive compensation only for secretarial-type services").

In a proceeding under § 110, the burden of proving the reasonableness of a fee collected by a bankruptcy petition preparer rests upon the petition preparer. See In re Froehlich, 23 Fed. Appx. 572, 574, 2001 WL 1530594 (7th Cir. 2001) (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); Doser, 281 B.R. at 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 Mr. Anderson acted as a petition preparer and that he collected a fee from the Debtors and has raised a question regarding the reasonableness of the fee. The ultimate burden of proof regarding the reasonableness of the fee then shifted to and rested with Mr. Anderson. Mr. Anderson failed to show by a preponderance of the evidence that the fee that he charged in these cases was reasonable compensation for his services as a petition preparer.

Because a petition preparer is limited to typing forms for a prospective debtor who has made the decision to file a bankruptcy case, that is all that Mr. Anderson is entitled to be compensated

for in these cases.⁴ In determining what that compensation should be, the court concludes that the proper analogy is what professional typists or word processors would charge because their services are most comparable to what a petition preparer is authorized to do. See Moore, 283 B.R. at 859; Bush, 275 B.R. at 85 n. 29 (rejecting consideration of rates charged by paralegals because "BPP's are prohibited from providing paralegal services"). Both parties in the present case offered some evidence regarding what a typing service would charge to type bankruptcy petitions, schedules, statements of affairs and related documents. Having weighed and evaluated such evidence, the court finds that the reasonable value of the services provided by Mr. Anderson in each of these cases, including providing copies of the documents, does not exceed the sum of \$80.00. In arriving at this finding, the court has taken into account that both of these cases are the type of routine cases commonly referred to as "no asset" cases in which the debtors have no real property, very little personal property and the debts are not unusual in either number or kind which minimizes the typing required in order to prepare the necessary forms. The court also has taken into account the fact that all of the typing was handled in Nevada by We The People USA at a cost to

⁴The agreements between the Debtors and Mr. Anderson, in describing the nature of Mr. Anderson's services, state: "I hereby retain the services of *We The People* to type bankruptcy forms for me."

Mr. Anderson that did not exceed \$50.00 per case.⁵ Mr. Anderson's involvement in the process was rather limited, involving the initial meeting with the Debtors, providing the workbook and other documents to the Debtors, receipt of the workbook after it was completed, proofreading the workbook for completeness, faxing the workbook to Nevada, receipt of the typed documents by electronic mail, review of the typed documents, making hard copies of the documents and arranging for the Debtors to pickup the documents. Having found that the reasonable value of the services provided by Mr. Anderson does not exceed \$80.00, the court further finds that the \$199.00 fee that was charged by Mr. Anderson in each of these cases is excessive to the extent of \$119.00 and concludes that \$119.00 of the fee therefore should be disallowed and that Mr. Anderson should be ordered to turn over \$119.00 to the Chapter 7 Trustee in each of these cases.

J. Did Mr. Anderson Commit Any Fraudulent,
Unfair or Deceptive Act?

Under § 110(i), if a bankruptcy petition preparer violates § 110 or "commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court," where a motion for damages can then be filed on behalf of the

⁵ Mr. Anderson split the fee received from the Debtors pursuant to paragraph 4.2 of the franchise agreement which is entitled "Processing Fee" and which requires that the franchise pay 25% of the fee received from the customer for "the preparation of legal documents and the continuing use of the Company's names, Marks and System"

debtor. For the reasons that follow, the court has concluded that Mr. Anderson engaged in unfair and deceptive conduct in both of the cases now before the court.

1. The Supervising Attorney.

When these cases were filed, the franchisor, We The People USA, provided a "supervising attorney" in North Carolina. According to Mr. Anderson's evidence, the supervising attorney was employed to review the forms that were provided to North Carolina franchisees, to supervise Mr. Anderson and other franchisees to ensure that they not engage in the unauthorized practice of law and comply with the requirements of the franchisor and to handle calls from customers of Mr. Anderson and other franchisees. Samuel J. Randall, IV, an attorney from Wilmington, North Carolina, was the supervising attorney for Mr. Anderson's franchise. The evidence disclosed that Mr. Randall is not a bankruptcy expert and that he does very little bankruptcy work and has few, if any, bankruptcy clients other than We The People USA if, in reality, We The People USA can be regarded as a bankruptcy client.

In dealing with his customers, including the Debtors, Mr. Anderson informs the customers of the existence of Mr. Randall and his role as supervising attorney and informs them that Mr. Randall is available to talk with them if they wish to call Mr. Randall with questions. In addition, the Bankruptcy Overview that is distributed to Mr. Anderson's customers also refers

customers to the supervising attorney. The Bankruptcy Overview states:

The bankruptcy law regarding the scope of a Chapter 7 discharge is complex. Know your rights. Should you have any doubts about the appropriateness of bankruptcy in your particular case, you should seek the advice of an attorney.

In addition, don't forget that you enjoy the right, as a WE THE PEOPLE customer, to chat with our Supervising Attorney, at no additional cost to you.

According to Mr. Randall and Mr. Anderson, Mr. Randall does not answer specific questions related to the particular facts presented by a customer and does not provide legal advice to customers. Instead, according to Mr. Randall and Mr. Anderson, Mr. Randall provides only general legal information to callers without applying the general legal information to the particular situation presented by the caller. It is questionable whether Mr. Randall, in fact, does limit his role to providing only general legal information to customers of Mr. Anderson. See Moore, 283 B.R. at 861. If he fails to do so, and does provide specific legal advice to customers, he most likely is violating the rules of professional conduct as well as the disclosure requirements of § 329 and Rule 2014 which are applicable to attorneys who represent debtors in bankruptcy cases. However, even if Mr. Randall limits his role to dispensing general legal information, a misleading and deceptive situation is created with respect to the supervising

attorney aspect of Mr. Anderson's services. While customers, including the Debtors in these cases, are encouraged to exercise their right to "chat" with the supervising attorney about their bankruptcy problems, no attempt is made by Mr. Anderson to inform them that they will not receive legal advice or that they cannot and should not rely upon the attorney's responses in the same manner as where a client seeks counsel from an attorney and the attorney-client relationship exists. The result is that customers are misled to believe that they are receiving services and benefits which they are not receiving. An example of this occurred in the cases now before the court. Mr. Graham testified that after Mr. Anderson discussed the supervising attorney with him, he found it comforting to know that Mr. Anderson "had a lawyer overseeing whatever." The erroneous impression created by Mr. Anderson that the supervising attorney would be "overseeing" is precisely the type of misconception that is likely to result from the misleading and deceptive references to the supervising attorney that occurred in these cases. Because of the absence of an actual attorney-client relationship, customers such as Mr. Graham are placed at risk when they are led to believe they are receiving reliable, personal guidance regarding bankruptcy law. Moreover, implicit in the references and referrals to the supervising attorney is a representation that the attorney is trained and qualified regarding bankruptcy law and able to provide reliable, accurate information

regarding bankruptcy law. The evidence strongly suggested that such a representation was unsupported and misleading in these cases, given the supervising attorney's lack of training, experience, and expertise in the bankruptcy field.

Another deceptive aspect of Mr. Anderson's touting the availability of the supervising attorney is that it leads customers to believe that Mr. Anderson's approach to processing bankruptcy forms is more beneficial and reliable as a result of the involvement of the supervising attorney, which is erroneous and misleading. Mr. Anderson is limited to merely typing information onto the official bankruptcy forms. He cannot lawfully assist customers in how to fill out the forms. The impression that the supervising attorney somehow enhances this limited service is illusory and misleading.

2. The Documents Utilized by Mr. Anderson.

One of the documents utilized by Mr. Anderson is a form document entitled "Bankruptcy Document Preparation Agreement". Each of the Debtors executed one of these forms in the cases now before the court. One of the matters covered by this document is the fee to be paid by the customer. The agreements signed by the Debtors states: "I also acknowledge that the fee approved for typing the bankruptcy forms by the U.S. Bankruptcy Trustee for the District I am filing in is \$199.00" This statement is false because there is no U.S. Trustee in this district and,

obviously, no fee for petition preparers in this district has been approved by a U.S. Trustee. Moreover, while there is a Bankruptcy Administrator in this district, a \$199.00 fee for petition preparers in this district has not been approved by the Bankruptcy Administrator. The false representation to customers that the fee being charged has been approved by an official in the bankruptcy system is false, deceptive and unfair and constitutes a violation of § 110 by Mr. Anderson.

The We The People Customer Information Workbook, Bankruptcy Overview and Step By Step Guide to the Bankruptcy Workbook were supplied to the Debtors in the cases now before the court. Mr. Anderson's use of these documents in providing the services of a petition preparer likewise is deceptive and unfair.

The Workbook, Bankruptcy Overview and Step by Step Guide, were all created by and provided to Mr. Anderson by We The People USA. The Workbook and Guide are intended to clarify the information required on the official forms for the petition, schedules and statement of financial affairs. A review of these documents reveals that they constitute legal advice when provided by a petition preparer to a customer for whom bankruptcy documents are being prepared. The Workbook to be completed by the customer is not merely a blank copy of the official forms. Rather, it is a document prepared by We The People USA which, together with the Guide and Overview, contains advice to the customer concerning

bankruptcy law and how the blanks in the Workbook should be completed. For example, detailed advice regarding the North Carolina exemption laws is provided in the Overview. Apart from providing legal advice, there are many inaccuracies in the documents supplied by Mr. Anderson. For example, both the Workbook and the Guide ask a debtor whether he or she wishes to "Reaffirm (keep) or Surrender (give up)" property. Not only is the parenthetical language an over simplification of the concepts of reaffirmation and surrender, they also may lead a debtor to choose incorrectly how to treat his or her property. An example of this occurred in the present case when Mr. Graham was led to erroneously include in his schedules real property which he did not own and to claim an exemption in such non-owned property. Moreover, some of the instructions in the Guide and Workbook involve interpretations that cannot be found within the Official Forms. For example, asking for the "quick sale" value of property where the Official Forms ask for "value," or limiting "animals" to "farm, not pets" where the Official Forms contain no such limitation. In addition to providing legal advice concerning how to fill out bankruptcy forms, these documents also include advice to debtors concerning other aspects of the bankruptcy process. For example, the Overview includes two pages of legal advice concerning the § 341 meeting of creditors and how to handle an abusive trustee and also gives advice for rebuilding credit after filing bankruptcy. While § 110

allows a bankruptcy petition preparer to type bankruptcy forms, it does not allow the petition preparer "to provide documents that explain bankruptcy or how to complete the required information that the preparer is then to transfer to the [O]fficial [F]orms." Moore, 283 B.R. at 863. Supplying such documents as a part of the services provided by a petition preparer constitutes the unauthorized practice of law within the definition contained in the N.C.G.S. § 84-2.1. Moreover, by taking the information placed in the Workbook by the customer and entering it by computer into the Official Forms, which differ from the Workbook, Mr. Anderson and We The People cease to be mere scriveners, as allowed by § 110, and, instead, engage in "the preparation . . . of petitions for use in any court" which falls within the definition contained in N.C.G.S. § 84-2.1.

The unauthorized practice of law constitutes a "fraudulent, unfair, or deceptive act" within the meaning of § 110. See Doser, 292 B.R. at 659; Bush, 275 B.R. at 83; In re Dunkle, 272 B.R. 450, 456 (Bankr. W.D. Pa. 2002); In Moffett, 263 B.R. 805, 813 (Bankr. W.D. Ky. 2001). Thus, by engaging in the unauthorized practice as hereinbefore described, Mr. Anderson thereby engaged in unfair and deceptive acts within the meaning of § 110(i).

An additional way in which it is unfair and deceptive to bundle the We The People documents with the services of a petition preparer is that it gives the false impression that these documents

are all that is required in order for the customer to decide whether to file and how to complete the Official Forms. See Moore, 283 B.R. at 863. Such a false impression easily could prove injurious to a consumer who acted in reliance on such impression and is the very type of situation that Congress sought to correct when it enacted § 110.

K. Appropriateness of Injunctive Relief
At This Time.

The Bankruptcy Administrator and the Attorney General both argue in their post-hearing briefs that the court should enjoin Mr. Anderson from continuing to tout the availability of the supervising attorney to his customers and from providing the Customer Information Workbook, Bankruptcy Overview and Step by Step Guide to the Bankruptcy Workbook to his customers in connection with his preparation of bankruptcy petitions, schedules and related documents. Although the court has the authority to issue such injunctive relief, the court has concluded that it would not be appropriate to do so at this time.

Under § 110(j), the debtor, a trustee, a creditor or the Bankruptcy Administrator "may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer." Pursuant to this provision, the parties specified in subparagraph (j) may bring an adversary proceeding in the bankruptcy court in order to enjoin a petition preparer who is

violating § 110 or engaging fraudulent, unfair or deceptive conduct and the bankruptcy court has the authority to grant such relief in an appropriate case. However, 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). But, if injunctive relief is pursued through a show cause order rather than an adversary proceeding, principles of due process mandate that the petition preparer be afforded the procedural protections that inhere in an adversary proceeding. Id. at 274. An essential procedural protection that must be afforded is notice to the petition preparer that injunctive relief is to be considered. Id. at 276.

This proceeding was initiated by means of a motion for show cause order and the issuance of a show cause order in response to the motion. Had the motion and show cause order provided the requisite notice regarding injunctive relief, there would be no procedural impediment to the court granting such relief. See In re Moore, 290 B.R. 287, 292-93 (Bankr. E.D.N.C. 2003). However, neither the motion nor the show cause order nor any of the discovery orders that were entered along the way refer to injunctive relief or provide notice that permanent injunctive relief against Mr. Anderson would be considered. As to the issues

that were mentioned in the show cause motion and order, Mr. Anderson was afforded ample notice and ample opportunity to engage in discovery to clarify any questions regarding the scope of the issues referred to in the motion and order, to obtain information regarding the evidence that would be presented at the hearing and to otherwise prepare for the hearing. However, there was no notice that one of the issues would be permanent injunctive relief against him. Absent such notice, the court concludes that it would not be appropriate to issue injunctive relief at this time.

L. Conclusion.

Based upon the foregoing findings and conclusions, orders shall be entered in these cases contemporaneously with the filing of this memorandum opinion granting the following relief:

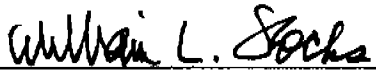
(1) Mr. Anderson shall be fined in the amount of \$500.00 in each of these cases pursuant to § 110(b)(2) and § 110(c)(3) of the Bankruptcy Code;

(2) \$119.00 of the fee charged by Mr. Anderson in each of these cases shall be disallowed and Mr. Anderson shall be ordered to disgorge and turnover \$119.00 to the Trustee in each of these cases pursuant to § 110(h)(2) of the Bankruptcy Code; and

(3) The fact of the above-described violations of § 110 and the fact of the above-described fraudulent, unfair or deceptive acts shall be certified to the United States District Court for the

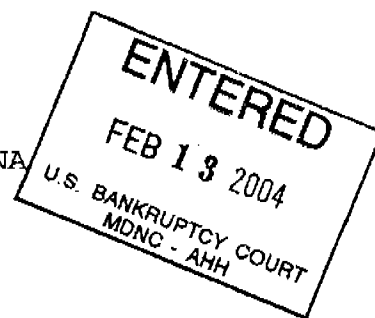
Middle District of North Carolina pursuant to § 110(i)(1) of the
Bankruptcy Code.

This 10th day of February, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:)	
)	
Victor Euglous Graham,)	✓ Case No. 02-81930C-7D
)	
Debtor.)	
_____)	
)	
Julie R. Kendrick,)	Case No. 02-82065C-7D
)	
Debtor.)	
)	

ORDER

In accordance with the memorandum opinion filed contemporaneously with the entry of this order, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) Charlie Anderson, d/b/a We The People Document Services, is hereby ordered to pay a fine in the amount of \$500.00 in each of these cases pursuant to § 110(b)(2) and § 110 (c)(3) of the Bankruptcy Code, to be paid within thirty days from the date of this order to the Clerk of this court for remittance to the United States Treasury;

(2) the court hereby disallows \$119.00 of the \$199.00 fee received by Charlie Anderson, d/b/a We The People Document Services, from the Debtor in each of these cases and Mr. Anderson is hereby ordered to disgorge and immediately turnover \$119.00 to the Trustee in each of these cases pursuant to § 110(h)(2) of the Bankruptcy Code; and

(3) The fact of the violations of § 110 which are described

in the memorandum opinion in these cases and the fact of the fraudulent, unfair or deceptive acts on the part of Mr. Anderson which are described in such memorandum opinion are hereby certified to the United States District Court for the Middle District of North Carolina through the transmission of a copy of this order and a copy of the memorandum opinion to the District Court in accordance with § 110(i)(1) of the Bankruptcy Code.

This 10th day of February, 2004.

William L. Stocks
WILLIAM L. STOCKS
United States Bankruptcy Judge