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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6
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8 In re)
9) Case No. 10-30418-A-7
10 RACHEL and DONNIE ELLIS,)
11 Debtors.)
12)
_____)

13 **MEMORANDUM**

14 The U.S. Trustee moves for the imposition of fines against,
15 and the disgorgement of fees paid to, Rita Mahaney. The motion
16 is based on alleged violations of 11 U.S.C. §§ 110(b)(1),
17 (b)(2)(A), (c)(1), (f), (h)(2), and (l)(2).
18

19 I

20 In February 2010, Rachel Hunt-Ellis went to Derrick Collins
21 for the preparation of a bankruptcy petition and the usual
22 statements and schedules. Mr. Collins, who is not an attorney,
23 works with Carroll Foster, the person identified by the debtors'
24 petition as the preparer of the bankruptcy documents that were
25 eventually filed. Ms. Foster also is not an attorney.

26 Mr. Collins asked Mrs. Hunt-Ellis to fill out a "Bankruptcy
27 Intake Sheet," but because Mrs. Hunt-Ellis' financial records
28 were so disorganized, Mr. Collins sent Mrs. Hunt-Ellis to Ms.

1 Mahaney for the preparation of an intake sheet. That intake
2 sheet included all information necessary to fill out the
3 bankruptcy petition, schedules, and statements.

4 Ms. Mahaney conducts her business separately from the
5 business conducted by Mr. Collins and Ms. Foster. Ms. Mahaney is
6 not an attorney. She uses two different business names, RM
7 Credit & Mortgage Processing and Legal Doc's "R" Us.

8 Ms. Mahaney met with Mrs. Hunt-Ellis. Ms. Mahaney offered
9 to "do a bankruptcy" for Mrs. Hunt-Ellis for a fee of \$3,200. It
10 was later agreed that the bankruptcy documentation would include
11 Donnie Ellis as a joint debtor. In addition, Ms. Mahaney said
12 she would "reestablish" Mrs. Hunt-Ellis' credit after the
13 completion of the bankruptcy.

14 Ms. Mahaney then prepared a bankruptcy intake sheet, which
15 she says she forwarded to Ms. Foster, who prepared and filed the
16 debtors' bankruptcy petition documents. Ms. Mahaney also
17 forwarded \$125 of the \$3,200 fee she collected from the debtors
18 to Ms. Foster. Ms. Mahaney's name, signature, social security
19 number, or address are not found on any of the petition documents
20 filed with the court.

21 While Ms. Mahaney disputes that she offered to file a
22 bankruptcy case for Mrs. Hunt-Ellis, the court does not believe
23 Ms. Mahaney.

24 Ms. Mahaney testified that she does not give legal advice to
25 anyone and that she did not give legal advice to the debtors.
26 Nevertheless, Ms. Mahaney admits to discussing with the debtors
27 questions such as whether they should file for bankruptcy jointly
28 or separately, whether the debtors could keep their truck in a

1 bankruptcy, whether the debtors could have their case reinstated
2 after dismissal and closure, and what the debtors should "expect
3 in court." Mahaney Decl. ¶¶ 10-12, 17-19.

4 The court also notes that Ms. Mahaney admits to preparing,
5 at least in part, the Statement by Debtor Not Represented by an
6 Attorney and instructing the debtors how to complete the
7 remainder of that document. Mahaney Decl. ¶ 19.

8 Ms. Mahaney testified that she has never represented anyone
9 in bankruptcy. Nonetheless, she admits to attending creditors'
10 meetings with clients. Mahaney Decl. ¶ 19. She admits to having
11 the Statement by Debtor Not Represented by an Attorney on hand in
12 her office and giving the statement to her clients. Mahaney
13 Decl. ¶ 19.

14 Most telling is that Ms. Mahaney admits that a letter was
15 sent to one of the debtors' creditors on Legal Docs "R" Us
16 stationary. That letter indicated that Legal Docs "R" Us was
17 "representing the [debtors in] Bankruptcy on June 1, 2010 in
18 court." Mahaney Decl. ¶ 21; Exhibits to Motion at 5. Although
19 Ms. Mahaney denies having authorized her staff to send this
20 letter, the fact remains that the letter was sent and no witness
21 was called from Ms. Mahaney's office to corroborate that the
22 letter was unauthorized. Id.

23 Ms. Mahaney argues that as a matter of course she does not
24 prepare bankruptcy petitions. On the other hand, she admits to
25 preparing bankruptcy intake sheets, used by petition preparers
26 and attorneys to prepare bankruptcy documentation. Mahaney Decl.
27 ¶¶ 7-8, 15.

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1 The court concludes that Ms. Mahaney, as well as Mr. Collins
2 and Ms. Foster, assisted the debtors in the preparation of their
3 bankruptcy documents. Therefore, these services are subject to
4 the restrictions imposed on bankruptcy petition preparers by 11
5 U.S.C. § 110.

6 The court also does not believe Ms. Mahaney's testimony
7 regarding the amount of time she spent going over the debtors'
8 financial records to prepare the intake sheet. Ms. Mahaney
9 testified that Mrs. Hunt-Ellis brought a large brown bag to her
10 office with "bills from approximately 75 different creditors."
11 Mahaney Decl. ¶ 5. Ms. Mahaney and her staff allegedly spent 85
12 hours on preparing the debtors' intake sheets. Mahaney Decl. ¶
13 13.

14 Yet, the debtors owned only one piece of real property and,
15 aside from three bank accounts with an aggregate balance of \$80,
16 they possessed modest personal property, consisting of clothing,
17 wedding rings, a watch, and a vehicle. The debtors had only two
18 secured creditors and 22 unsecured creditors. Their bankruptcy
19 does not involve a business.

20 The bankruptcy documents consist of the usual statements and
21 schedules, totaling only 39 pages, including the bankruptcy
22 petition (3 pages), the summary of schedules (1 page), the
23 statistical summary (1 page), the declaration concerning the
24 debtors' schedules (1 page), Schedules A through J (17 pages),
25 the statement of financial affairs (6 pages), the statement of
26 intention (2 pages), and the statement of current monthly income
27 and means test calculation (8 pages).

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1 In short, whatever the condition of the debtors' records,
2 their financial situation was relatively uncomplicated. The
3 court does not believe that it took 85 hours to complete the
4 intake sheet that was used to gather the information for the
5 bankruptcy documents.

6 While part of Ms. Mahaney's \$3,200 fee was for services
7 clearly related to the preparation of the bankruptcy documents,
8 part of her fee was ostensibly for the restoration of the
9 debtors' credit. Conceivably, Ms. Mahaney could have helped the
10 debtors prepare their bankruptcy documents and then assisted them
11 with something that was unrelated to the preparation of
12 bankruptcy documents. While the former would be subject to the
13 requirements of 11 U.S.C. § 110(a)(1), the latter would be beyond
14 the scope of section 110.

15 However, Ms. Mahaney's credit repair services were without
16 substance or benefit to the debtors. They were a sham used to
17 justify a higher fee and evade the limits on fees that can be
18 charged for the preparation of bankruptcy documents.¹ The credit
19 repair service was limited to ordering the debtors' credit
20 reports to determine whether their prebankruptcy debts were
21 identified as "discharged in bankruptcy." If they were not, Ms.
22 Mahaney wrote a letter to the credit reporting agency requesting
23 that the debt be reported as discharged.

24
25 ¹This court's Guidelines Pertaining to Bankruptcy Petition
26 Preparers in Eastern District of California Bankruptcy Cases,
27 adopted October 20, 1997, permits bankruptcy petition preparers
28 to charge up to \$125 for the preparation of a bankruptcy petition
and associated schedules and statements. This is a presumptively
reasonable fee. A preparer may charge more than \$125, but if the
fee is challenged, the preparer must demonstrate that it was
reasonable under the circumstances of the particular case.

1 Credit reporting agencies routinely report a chapter 7
2 bankruptcy discharge on credit reports. And, they eventually
3 cease reporting as delinquent prebankruptcy debts, noting their
4 discharge in bankruptcy. Apparently, Ms. Mahaney was attempting
5 to speed up the reporting of the debtors' prebankruptcy debts as
6 "discharged."

7 The value of this service to the debtors is dubious. First,
8 the benefit to any debtor of a credit report's notation of a
9 debt's discharged status is tempered by the fact that the
10 bankruptcy discharge is on the credit report for 10 years. The
11 presence of a bankruptcy filing and discharge will limit a
12 debtor's access to new credit, whether or not debts are
13 identified as discharged. Second, there is no evidence in this
14 case that the debtors were attempting to incur new credit that
15 would be unavailable if their old debts were not reported as
16 discharged. Third, even though the debtors' case has been over
17 since September 28, 2010, Ms. Mahaney efforts to restore their
18 credit have been minimal.

19 The court concludes that Ms. Mahaney's credit repair
20 services were an artifice to justify a higher fee for unnecessary
21 services offered in connection with the preparation of bankruptcy
22 documents. Those services were insignificant and of no benefit
23 to the debtors.

24 Therefore, all of the fees charged are subject to the
25 limitations imposed by section 110.

26
27 II

28 Turning to the merits of the motion, section 110(a)(1)

1 defines a "bankruptcy petition preparer" as "a person, other than
2 an attorney for the debtor or an employee of such attorney under
3 the direct supervision of such attorney, who prepares for
4 compensation a document for filing." "A 'document for filing'
5 means a petition or any other document prepared for filing by a
6 debtor in a United States bankruptcy court or a United States
7 district court in connection with a case under this title." 11
8 U.S.C. § 110(a)(2).

9 The statute then goes on to define the preparer's
10 obligations, as outlined in section 110(b)-(h). A preparer who
11 violates any of subsections (b) through (h) may be fined up to
12 \$500 for each violation. 11 U.S.C. § 110(l)(1).

13 Ms. Mahaney is a bankruptcy petition preparer within the
14 meaning of section 110(a)(1).

15 Ms. Mahaney was the one who gathered the information she
16 determined was needed for the filing of the debtors' bankruptcy
17 case. She is the one to whom the debtors paid the \$3,200 fee for
18 the preparation of the bankruptcy documents. The debtors did not
19 meet or pay any fees to Ms. Foster, whose name, signature,
20 address, and social security number appears on the petition
21 documents. And, even though the debtors' bankruptcy petition
22 document may not have been physically prepared by Ms. Mahaney,
23 they were completed with the information she deemed appropriate
24 and necessary. She gathered the information, organized the
25 information, and provided the information to another who merely
26 transferred it to the bankruptcy documents.

27 Ms. Mahaney acted as the debtors' bankruptcy advisor before
28 and after the filing of the petition. She advised them about the

1 filing of a joint petition, discussed with them whether they
2 could keep a vehicle in bankruptcy, advised them about the
3 reinstatement of their case after dismissal and closure, and told
4 the debtors what to expect at the meeting of creditors. The fact
5 that Ms. Mahaney may have "consulted" with Ms. Foster about these
6 issues, before discussing them with the debtors, is irrelevant.
7 This makes Ms. Mahaney a debt relief agency and a bankruptcy
8 petition preparer within the meaning of section 110(a)(1). See
9 also 11 U.S.C. § 101(12A).

10 Section 110(b)(1) requires a preparer who prepares a
11 document for filing to sign the document and print on the
12 document the preparer's name and address. The petition, the
13 schedules, the statement of financial affairs, the statement of
14 intention, and the statement of means test calculation do not
15 contain Ms. Mahaney's signature or name. Ms. Mahaney's failure
16 to place her name and signature on each of these documents is a
17 separate violation. Because the court is unaware of any other
18 violations of section 110 by Ms. Mahaney in other cases, the
19 court will assess a fine of \$250 for these violations as well as
20 the other violations described below.

21 11 U.S.C. § 110(b)(2) provides:

22 (A) Before preparing any document for filing or
23 accepting any fees from or on behalf of a debtor, the
24 bankruptcy petition preparer shall provide to the
25 debtor a written notice which shall be on an official
26 form prescribed by the Judicial Conference of the
27 United States in accordance with rule 9009 of the
28 Federal Rules of Bankruptcy Procedure.

(B) The notice under subparagraph (A)–

(i) shall inform the debtor in simple language
that a bankruptcy petition preparer is not an
attorney and may not practice law or give legal
advice;

(ii) may contain a description of examples of
legal advice that a bankruptcy petition preparer

1 is not authorized to give, in addition to any
2 advice that the preparer may not give by reason of
subsection (e) (2); and
(iii) shall—

3 (I) be signed by the debtor and, under
4 penalty of perjury, by the bankruptcy
petition preparer; and

5 (II) be filed with any document for filing.

6 Ms. Mahaney neither provided the debtors with the required
7 written notice, nor did she file the notice with the bankruptcy
8 petition, schedules, and statements. While a notice was filed,
9 it bears only the name and signature of Ms. Foster.

10 The debtors also have never signed the petition, statements,
11 and schedules. Hunt-Ellis Decl. at 2. The court concludes that
12 the debtors' signatures on these documents, including on the
13 notice signed by Ms. Foster, have been forged.

14 The court will assess a second \$250 fine against Ms. Mahaney
15 under section 110(b) (2).

16 Section 110(c) (1) and (c) (2) (A) also require a preparer who
17 prepares a document for filing to place her social security
18 account number after the preparer's signature. 11 U.S.C. §
19 110(c) (2) (A) provides: "Subject to subparagraph (B), for purposes
20 of this section, the identifying number of a bankruptcy petition
21 preparer shall be the Social Security account number of *each*
22 *individual who prepared the document or assisted in its*
23 *preparation.*"

24 The petition, the schedules, the statement of financial
25 affairs, the statement of intention, and the statement of means
26 test calculation do not contain Ms. Mahaney's social security
27 number, even though she directed the preparation of the debtors'
28 bankruptcy petition documents. Ms. Mahaney's failure to place

1 her social security number on each of these documents is a
2 separate violation. The court will assess a third fine of \$250
3 for this violation.

4 Section 110(f) prescribes: "A bankruptcy petition preparer
5 shall not use the word 'legal' or any similar term in any
6 advertisements, or advertise under any category that includes the
7 word 'legal' or any similar term." Nevertheless, Ms. Mahaney
8 uses the word "legal" in one of her two business names, under
9 which she operates, Legal Docs "R" Us. Ms. Mahaney has used this
10 business name in communications with at least one creditor of the
11 debtors. See Exhibits to Motion at 5. The use of the word
12 "legal" in the business name used by Ms. Mahaney suggests and
13 tends to communicate to both clients and parties she contacts
14 that she provides legal services. Yet, Ms. Mahaney is not a
15 member of the California bar or any other bar. The court
16 concludes that Ms. Mahaney's use of the word legal, in one of the
17 two business names under which she operates, violates section
18 110(f). Hence, the court will assess a fourth fine of \$250
19 against Ms. Mahaney.

20 Section 110(h) (2) requires a bankruptcy petition preparer to
21 file with the petition a declaration disclosing any fees received
22 by the preparer from or on behalf of the debtor within 12 months
23 before the petition filing and any unpaid fees charged to the
24 debtor.

25 Ms. Mahaney collected a fee of \$3,200 from the debtors. She
26 shared \$125 of the fee with Ms. Foster. Even under Ms. Mahaney's
27 version of the facts (which is not accepted by the court), at
28 least some of this fee was for Ms. Mahaney's preparation of

1 bankruptcy documents. At a minimum, she gathered the information
2 for the documents and then provided it to another who typed the
3 documents and shared her fee with that person. In violation of
4 section 110(h)(2), Ms. Mahaney did not submit a declaration
5 disclosing her collection of a fee from the debtors for this
6 work. The court notes further there is no reference to the
7 collection of the \$3,200 in the statement of financial affairs.

8 The only disclosure of fees is from Ms. Foster, with whom
9 the debtors never met. Ms. Foster executed a disclosure of
10 compensation that was filed with the debtors' petition. She
11 disclosed the fee of \$125 given to her by Ms. Mahaney.

12 Given the above, the court concludes that Ms. Mahaney has
13 violated section 110(h)(2), warranting the assessment of a fifth
14 \$250 fine.

15 Section 110(l)(2) requires the tripling of fines assessed
16 under section 110(l)(1), when a preparer prepares a document for
17 filing in a manner that fails to disclose the identity of the
18 preparer. 11 U.S.C. § 110(l)(2)(D). Ms. Mahaney's name as the
19 petition preparer has not been disclosed anywhere in the petition
20 documents, even though she says that she spent 85 hours gathering
21 the information needed to complete the bankruptcy petition,
22 schedules, and statements. Therefore, the court will triple the
23 fines assessed against Ms. Mahaney.

24 The court will order Ms. Mahaney to disgorge the \$3,200 fee,
25 less the \$125 paid to Ms. Foster, she collected from the debtors.
26 Section 110(h)(3)(B) provides: "All fees charged by a bankruptcy
27 petition preparer may be forfeited in any case in which the
28 bankruptcy petition preparer fails to comply with this subsection

1 or subsection (b), (c), (d), (e), (f), or (g)."

2 Finally, section 110(i)(1) provides:

3 If a bankruptcy petition preparer violates this section
4 or commits any act that the court finds to be
5 fraudulent, unfair, or deceptive, on the motion of the
6 debtor, trustee, United States trustee (or the
7 bankruptcy administrator, if any), and after notice and
8 a hearing, the court shall order the bankruptcy
9 petition preparer to pay to the debtor—

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; 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.

11 Ms. Mahaney's failure to disclose her preparation of the
12 debtors' bankruptcy petition documents despite collecting fees
13 from the debtors for these services, and her attempt to justify
14 this exorbitant, undisclosed fee by claiming to have provided
15 unnecessary and unhelpful credit repair services to the debtors,
16 constitutes fraudulent, unfair, or deceptive conduct for purposes
17 of section 110(i)(1).

18 The court will order Ms. Mahaney to pay the debtors \$6,125,
19 twice the net fee she collected from them.

21 III

22 There are two aspects to this case that are troubling.

23 This court has adopted guidelines specifying a fee that is
24 presumptively reasonable for a nonattorney to charge for the
25 preparation of bankruptcy documents. See Guidelines Pertaining
26 to Bankruptcy Petition Preparers, etc., adopted Oct. 20, 1997.
27 In this instance, Ms. Foster took the presumptively reasonable
28 fee but Ms. Mahaney charged the debtors a further \$3,025 to

1 gather all of the information used by Ms. Foster to prepare the
2 bankruptcy documents. Had Ms. Foster done all of the work, she
3 would have been limited to the presumptively reasonable fee
4 (other a higher fee if she demonstrated that the presumptive fee
5 was inadequate). By the device of subdividing the work, Ms.
6 Mahaney attempted to evade, not only this court's guidelines, but
7 the requirements of section 110.

8 Ms. Mahaney also attempted to evade the requirements of
9 section 110 by claiming to provide other services unrelated to
10 the preparation of the debtors' bankruptcy petition. Her credit
11 repair services were unnecessary, of no benefit to the debtors,
12 and required minimal time and effort. Because they were offered
13 in connection with the preparation of the bankruptcy documents
14 and were a sham designed only to extract more money from the
15 debtors, the court has dealt with them under section 110.

16 A separate order will be entered. The U.S. Trustee shall
17 lodge a proposed form of order.

18 Dated: By the Court

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Michael S. McManus, Judge
United States Bankruptcy Court
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