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9 UNITED STATES BANKRUPTCY COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

11 In re ) Case No. 08-10255-B-7  
12 Jack Lee Heath and )  
Bridget Heath, ) DC No. UST-1  
13 )  
14 Debtors. )  
\_\_\_\_\_ )

15  
16 **MEMORANDUM DECISION REGARDING UNITED STATES**  
**TRUSTEE’S MOTION FOR AN ORDER IMPOSING A FINE**  
**AND DISGORGEMENT PURSUANT TO 11 U.S.C. § 110**  
17

18 This memorandum decision is not approved for publication and may not be cited except  
19 when relevant under the doctrine of law of the case or the rules of res judicata and claim  
preclusion.

20 Mark L. Pope, Esq., Assistant U.S. Trustee, appeared for the movant, Sara L. Kistler,  
Acting U.S. Trustee.

21 Respondent Barbara H. Reynolds appeared *in propria persona*.

22 Phillip Gillet, Esq., appeared for Jack Heath and Bridget Heath.

23 Before the court is the United States Trustee’s (“UST”) motion for an order  
24 imposing a fine of \$31,500 and disgorgement of fees totaling \$1,100 (the “Motion”). The  
25 UST contends that respondent Barbara Reynolds (“Reynolds”) acted as a “bankruptcy  
26 petition preparer” in connection with this bankruptcy case and failed to comply with  
27 numerous provisions of the law that regulate the activities of bankruptcy petition  
28 preparers, 11 U.S.C. § 110. Reynolds admits that she prepared the petition and other

1 documents filed in this case, but denies that she did so as a “bankruptcy petition preparer”  
2 within the meaning of the Bankruptcy Code. Because the court finds Reynolds’  
3 arguments to be unpersuasive, the UST’s Motion will be granted.

4 This memorandum decision contains the court’s findings of fact and conclusions of  
5 law required by Federal Rule of Civil Procedure 52(a), made applicable to this contested  
6 matter by Federal Rule of Bankruptcy Procedure 7052. The court has jurisdiction over  
7 this matter under 28 U.S.C. § 1334 and 11 U.S.C. § 110<sup>1</sup> and General Orders 182 and 330  
8 of the U.S. District Court for the Eastern District of California. This is a core proceeding  
9 as defined in 28 U.S.C. § 157(b)(2)(A).

10 **Background.**

11 Reynolds is a paralegal. She is not an attorney. The Debtors Jack & Bridget  
12 Heath (the “Debtors”) had used Reynolds’ “paralegal services” for several years prior to  
13 the bankruptcy. She prepared numerous documents and advised and assisted Jack Heath  
14 in his unsuccessful effort to prosecute some probate litigation in the state court. Bridget  
15 Heath (“Ms. Heath”) testified that the Debtors paid Reynolds more than \$7,000 at various  
16 times for her services in connection with the state court proceedings. The Debtors’  
17 bankruptcy schedules did not disclose any of those payments to Reynolds, and there was  
18 no record to show how Reynolds accounted for and billed those services.

19 By late 2007, it became apparent that the Debtors would need to seek bankruptcy  
20 protection. Ms. Heath testified that they had paid so much money to Reynolds, they were  
21 unable to keep current with their other bills and a large judgment had been entered against  
22 Jack Heath in the probate litigation. It is not clear whether Reynolds advised the Debtors  
23 to file bankruptcy, but she did agree to prepare and file all of the required documents.

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26 <sup>1</sup>Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy  
27 Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-  
28 9036, as enacted and promulgated *after* October 17, 2005, the effective date of The Bankruptcy  
Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat.  
23.

1 Reynolds did not quote a fee for doing the bankruptcy work, but she told the Debtors that  
2 they would need to work out a payment plan later because she was “not going to do all  
3 this work for nothing.”

4 The Debtors’ voluntary chapter 7 petition was filed on January 16, 2008, *in*  
5 *propria persona*. The case was converted to chapter 13 on February 8, 2008, reconverted  
6 to chapter 7 on May 8, 2008, after the chapter 13 trustee filed a motion to dismiss, and  
7 was subsequently dismissed.<sup>2</sup> Reynolds assisted the Debtors and gave them legal advice  
8 with regard to the bankruptcy process and the preparation of their documents. She  
9 prepared and filed the petition, schedules, and virtually every other document filed by the  
10 Debtors. Ms. Heath testified that Reynolds even signed the documents using the Debtors’  
11 names and then instructed the Debtors not to disclose that she had been involved in any  
12 way.<sup>3</sup>

13 Reynolds is familiar with the Bankruptcy Code and bankruptcy procedure and has  
14 performed services as a “petition preparer” in several other bankruptcy cases. Reynolds  
15 contends that in each of those other cases, she fully disclosed her involvement and  
16 complied with § 110. However in this case, Reynolds chose not to disclose that she was  
17 involved. She did not disclose on any of the Debtors’ documents her name, address, or  
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19 <sup>2</sup>On July 10, 2008, the UST obtained a judgment in a related adversary proceeding  
20 denying the Debtors’ discharge pursuant to § 727(a)(8). The Debtors had received a chapter 7  
21 discharge in a prior case less than eight years before filing this case. This bankruptcy case was  
22 dismissed on August 26, 2008, after the Debtors failed to attend the § 341 meeting of creditors.  
23 However, the court specifically retained jurisdiction over this contested matter.

24 <sup>3</sup>Ms. Heath testified that Reynolds gave them legal opinions and advice over the course  
25 of the probate proceeding. It appears that Reynolds continued to provide legal advice in  
26 connection with the bankruptcy. Reynolds prepared the schedules and all of the bankruptcy  
27 documents. There was no evidence to show that the Debtors had any input or control over the  
28 preparation of those documents or their contents. Reynolds prepared the Debtors’ chapter 13  
plan and a motion to value their automobile and she sent the Debtors several communications  
advising them what they needed to do once the petition was filed. Reynolds essentially gave  
legal advice when she decided it was proper to sign the documents on the Debtors’ behalf. She  
also gave legal advice when she decided it was not necessary to comply with § 110.

1 social security number as required of petition preparers by § 110. The Debtors' schedules  
2 do not disclose that the Debtors had paid, or even agreed to pay any compensation to  
3 Reynolds in connection with this bankruptcy case, a further requirement of § 110.

4 Ms. Heath testified, based on review of her checkbook ledger, that she delivered  
5 three payments to Reynolds totaling \$1,100 after the bankruptcy petition was filed.<sup>4</sup> She  
6 gave Reynolds \$400 in cash on or about February 8, 2008, after Reynolds told her that  
7 she needed some money for preparing documents. Ms. Heath delivered two more cash  
8 payments totaling \$400 to Reynolds on or about March 10, 2008, after Reynolds called  
9 and asked for more money. Ms. Heath delivered a third cash payment of \$300 on or  
10 about March 25, 2008. She did not remember any specific conversation relating to that  
11 payment. All three of the cash payments were noted in Ms. Heath's checkbook ledger.  
12 Reynolds denies categorically that she received any of the payments which Ms. Heath  
13 testified to and contends that she did all of the work in this bankruptcy case without any  
14 consideration.

15 **Issues Presented.**

16 There is no dispute here that Reynolds prepared the petition, schedules, and all of  
17 the other documents filed on behalf of the Debtors in this case. The central issue is  
18 whether Reynolds received any compensation for having done so. If so, then she was a  
19 "bankruptcy petition preparer" subject to the limitations and mandates of § 110. The  
20 UST contends that Reynolds received approximately \$1,100 for services rendered,  
21 including document preparation, in connection with this bankruptcy case, which should  
22 have been disclosed along with the other relevant information required by § 110. The  
23 UST requests an order imposing a fine totaling \$31,500 and disgorgement of the  
24 postpetition money paid to Reynolds in the amount of \$1,100. Reynolds denies that she  
25 was paid any money by the Debtors in connection with this bankruptcy case. Reynolds  
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27 <sup>4</sup>The Debtors' checkbook ledger was not admitted into evidence. Ms. Heath referred to  
28 the ledger to refresh her recollection and testified directly as to each payment.

1 further denies that she received any money from the Debtors after commencement of the  
2 case for any purpose, bankruptcy or otherwise. Based thereon, Reynolds contends that  
3 she did not act as a “bankruptcy petition preparer,” and was not required to comply with §  
4 110.

5 **Applicable Law.**

6 Bankruptcy Code § 110 defines a “bankruptcy petition preparer” as “a person,  
7 other than an attorney for the debtor . . . who prepares *for compensation* a document for  
8 filing” in a United States bankruptcy court. § 110(a)(1) (emphasis added). The term  
9 “document for filing” means “a petition or any other document prepared for filing by a  
10 debtor in a United States bankruptcy court . . . in connection with a case under [Title 11].”  
11 § 110(a)(2).

12 An individual petition preparer is required by § 110 to, *inter alia*, “sign the  
13 document and print on the document the preparer’s name and address.” § 110(b)(1).  
14 Before preparing any document or accepting any fees from a debtor, a petition preparer  
15 must “provide to the debtor a written notice which shall be on an official form” which  
16 informs the debtor that the petition preparer “is not an attorney and may not practice law  
17 or give legal advice.” That notice must “be signed by the debtor and, under penalty of  
18 perjury, by the bankruptcy petition preparer,” and must be filed with the other documents.  
19 § 110(b)(2)(A) & (B). A petition preparer must file a declaration under penalty of perjury  
20 “disclosing any fee received from or on behalf of the debtor within 12 months  
21 immediately prior to the filing of the case. . . .” § 110(h)(2). An individual petition  
22 preparer must place an “identifying number” on each document she prepares.  
23 § 110(c)(1). A petition preparer is statutorily prohibited from executing any document on  
24 behalf of a debtor (§ 110(e)(1)) and may not give legal advice. § 110(e)(2).

25 A petition preparer can be ordered to disgorge all fees charged if she fails to  
26 comply with the above-referenced provisions of § 110. § 110(h)(3)(B). A petition  
27 preparer is also subject to fines up to \$500 for each such failure to comply with § 110.  
28 § 110(l)(1). The fine shall be tripled if the petition preparer failed to disclose her identity

1 on the documents. § 110(1)(2)(D).

2  
3 **Analysis.**

4 Congress added § 110 to the Bankruptcy Code in 1994, “as a congressional  
5 response to perceived abuse of the bankruptcy laws by so-called ‘typing services’ which  
6 had proliferated especially in the Central District of California.” *In re Gutierrez*, 248 B.R.  
7 287, 292 (Bankr. W.D. Texas 2000). The legislative intent behind this new law was  
8 stated to “control the proliferation of ‘bankruptcy typing mills’ which were said to have  
9 ‘unfairly preyed upon’ people who ‘do not . . . understand the bankruptcy system.’” and  
10 to “protect individual debtors from ‘bankruptcy petition preparers who negligently or  
11 fraudulently prepare bankruptcy petitions.’” *Id.*, citations omitted.

12 Ms. Heath testified that she paid Reynolds \$1,100 for services rendered after the  
13 petition was filed. Reynolds contends that Ms. Heath is not telling the truth. It is the  
14 function of the trial court to determine the facts. In doing so, this court must review the  
15 physical evidence, consider the testimony and credibility of the witnesses, resolve any  
16 conflicts or inconsistencies in the evidence, and make findings of fact and conclusions of  
17 law which are supported by the record.

18 Facts which cannot be determined from direct testimony or physical evidence may  
19 be determined by inference. An inference is a fact which the court may find as the logical  
20 result of other facts. It is a “deduction of fact that may be logically and reasonably drawn  
21 from another fact or group of facts found or otherwise established in an action.”  
22 *Giacalone v. Malget (In re Malget)*, 165 B.R. 933, 937 (Bankr. S.D. Cal. 1994), citing  
23 *Cal.Ev.Code* § 600(b) (West 1994). Inferences are an indispensable tool of logical  
24 analysis and the finder of fact may draw reasonable inferences that are supported by  
25 evidence of sufficient probative value to form a rational basis for the court’s conclusion.  
26 The inference “must be drawn by reason from the facts on which it purports to rest.” *In*  
27 *re Malget*, 165 B.R. at 937, quoting *Dreijer v. Girod Motor Company*, 294 F.2d 549, 554  
28 (5th Cir. 1961).

1 Prior to preparing the bankruptcy schedules, Reynolds had done a substantial  
2 amount of “paralegal” work for Jack Heath. The Debtors had paid Reynolds more than  
3 \$7,000 for those services at various times. When it became apparent that the Debtors  
4 needed to seek bankruptcy protection, Reynolds agreed to prepare the petition and related  
5 documents, but she informed the Debtors that she would not do “all the work for  
6 nothing.” Reynolds was an experienced paralegal. She made her living by providing  
7 services to people who needed legal help. The fact that Reynolds did the legal work in  
8 this case gives rise to a rebuttable presumption that she did so for compensation.  
9 Reynolds offered no explanation as to why she would agree to do the work in this case  
10 “for free.” As a matter of law, Reynolds was barred by the automatic stay from  
11 demanding additional compensation for work she had already done in connection with the  
12 probate proceeding. § 362(a). In the court’s view, it is illogical that Reynolds would  
13 agree to provide significant legal services for the prosecution of a new bankruptcy case  
14 without any intention of being compensated for those services.

15 The Debtors paid Reynolds thousands of dollars in cash over a period of several  
16 years for all of the work she had done for Jack Heath. The postpetition payments relevant  
17 to this contested matter were reflected in the Debtors’ checkbook ledger as “ATM  
18 withdrawals.” Reynolds denies that she received any postpetition payments from the  
19 Debtors, in cash or otherwise, but she failed to produce any evidence of billing and  
20 payment records to show how her services were normally documented and billed to the  
21 Debtors. Based on the absence of proper business records, the court can infer that  
22 Reynolds did not maintain billing records for the Debtors. The absence of billing records  
23 tends to corroborate Ms. Heath’s testimony that she did make the postpetition cash  
24 payments to Reynolds. Since the Debtors paid Reynolds in cash after the bankruptcy was  
25 filed, the court can infer that they also paid her in cash for her prepetition services.

26 Reynolds produced copies of petitions and documents from other bankruptcy cases  
27 she had prepared to show that she did understand the law with regard to bankruptcy  
28 petition preparers, and had complied with § 110 in those cases. However, she declined to

1 produce any records to show how the services she provided to other clients were billed  
2 and accounted for. From this, the court can infer that Reynolds did much of her work  
3 without keeping formal records and that “cash” compensation was a regular part of her  
4 general business practice. If Reynolds did not keep any records to show what she did, or  
5 how and when she was paid in her general practice, then it is difficult to believe her  
6 testimony wherein she denies receiving the specific cash payments described by Ms.  
7 Heath. When the court finds one witness’ testimony to be more credible than another’s, it  
8 can afford the first witness’ testimony greater weight. *In re Lona*, 393 B.R. 1, 11 (Bankr.  
9 N.D. Cal. 2008). Where the testimony of a witness is not believed, the trier of fact may  
10 simply disregard it. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S., 485, 512,  
11 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984).

12 **Conclusion.**

13 Based on the foregoing, the court finds and concludes that Reynolds did receive  
14 compensation of at least \$1,100 for preparing documents in this bankruptcy case and she  
15 did act in the capacity of a “bankruptcy petition preparer” within the meaning of § 110.  
16 In addition, Reynolds gave the Debtors legal advice, signed the pleadings on behalf of the  
17 Debtors, failed to provide and file the required notice, and failed to disclose in any way  
18 her involvement in this case. Indeed, she instructed the Debtors to conceal her  
19 involvement. The U.S. Trustee’s Motion for an order imposing a fine and disgorgement  
20 of fees is well taken and will be granted. The UST shall submit a proposed order which  
21 provides for the disgorgement of \$1,100 and which sets forth the calculations for a proper  
22 fine imposed pursuant to § 110.

23 Dated: November 4, 2008

24  
25  
26 /s/ W. Richard Lee  
27 W. Richard Lee  
28 United States Bankruptcy Judge