

§ 110(i)

In re Stacy, Case No. 395-33618-elp7

3/11/96

ELP

Unpublished

The Chapter 7 trustee moved for an order certifying violations of 11 U.S.C. § 110 to the District Court for imposition of damages. The court found that Robert Tank, a bankruptcy petition preparer, violated section 110(i)(1) by allowing debtor's first bankruptcy case to be dismissed for failure to file bankruptcy papers and by engaging in unfair or deceptive practices by listing personal property in debtors' schedules that they did not own, failing to disclose a prior bankruptcy filing, and altering debtors' expense budget without their knowledge or consent. The findings were certified to District Court for a determination of damages.

NOTE: FOOTNOTE 2 OF THE ORDER REFERS TO A MEMORANDUM OPINION IN A RELATED ADVERSARY PROCEEDING AND STATES THAT A COPY OF THE MEMORANDUM OPINION IS ATTACHED TO THE ORDER. BECAUSE THE MEMORANDUM OPINION IS BEING FILED AND CIRCULATED SEPARATELY, IT IS NOT ATTACHED TO THIS COPY OF THE ORDER.

P96-3(10)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Case No. 395-33618-elp7
)
EDWIN L. STACY and SUSAN I.) ORDER CERTIFYING VIOLATIONS
STACY,) OF 11 U.S.C. § 110 TO
) DISTRICT COURT
Debtors.)

Edward C. Hostmann, the Chapter 7 trustee appointed in the case of the above-named debtors, has moved for an order certifying violations of 11 U.S.C. § 110 by Robert Tank, bankruptcy petition preparer, to the District Court. The alleged violations arose from the assistance Tank provided to Susan Stacy in filing a bankruptcy petition, which was dismissed, and to Susan Stacy and her husband in filing a second bankruptcy petition. The matter came on for hearing on February 21, 1996.¹

¹ The hearing on this motion was consolidated with the trial in the adversary proceeding U.S. Trustee v. Tank, Adv. No. 95-3471, in which the U.S. Trustee sought an injunction for violations of 11 U.S.C. § 110 and for the unauthorized practice of law, as well as a fine for violations of 11 U.S.C. § 110(f) and turnover of the fee paid by Susan Stacy for Tank's services,
(continued...)

Robert Tank, doing business as Legal Alternatives or Law Alternatives, appeared pro se. The trustee appeared through counsel. Having considered the evidence and heard the arguments of the parties, I certify the following facts to the District Court as violations of 11 U.S.C. § 110(i).²

¹(...continued)
pursuant to 11 U.S.C. § 110(h).

² 11 U.S.C. § 110(i) provides:

"If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or 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, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy 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.

"(2) 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 plus reasonable attorneys' fees and costs incurred."

(continued...)

I. TRUSTEE'S ALLEGATIONS

The trustee alleges that, with regard to the first bankruptcy petition, Tank violated 11 U.S.C. § 110(i)(1) by failing to file the bankruptcy papers, with the result that the case was dismissed. With regard to the second bankruptcy petition, the trustee alleges that Tank violated 11 U.S.C. § 110(i)(1) by engaging in certain unfair or deceptive acts. He also alleges that, as to both bankruptcy cases, Tank violated 11 U.S.C. § 110(f) by advertising using the name of "Legal Alternatives." I have fined Tank for violations of section 110(f) in the adversary proceeding brought by the U.S. Trustee, see note 1, supra, and therefore will not certify any facts regarding that violation to the District Court on the trustee's motion.

As to the violation of section 110(i)(1) relating to Susan Stacy's first bankruptcy case, the trustee seeks to recover for the estate of the second bankruptcy case Stacy's actual damages plus \$2,000 plus attorney fees and costs. As to the violation of section 110(i)(1) relating to the second bankruptcy case, the trustee seeks to recover for the debtors the Stacys' actual

²(...continued)

This order sets out only those findings that are pertinent to the Chapter 7 trustee's motion in the main case. For further background facts, the court may refer to my Memorandum Opinion entered in the adversary proceeding, a copy of which is attached to this order.

damages plus \$2,000 plus attorney fees and costs. In addition, he seeks to recover for the estate \$1,000 plus attorney fees and costs, pursuant to 11 U.S.C. § 110(i)(2).

This order makes findings regarding violations of 11 U.S.C. § 110. It does not make any determination regarding a remedy for those violations, because section 110(i) appears to require the District Court, not the Bankruptcy Court, to determine the appropriate remedy.

II. FINDINGS OF FACT

There were conflicts in the evidence regarding material facts. To the extent that Susan Stacy ("Stacy") had different recollections than Tank did, I found Stacy to be more credible. The events about which she testified were important to her, and she had a clear memory of what transpired. Tank, on the other hand, dealt with many debtors. What transpired in an individual case was not nearly as significant to Tank as it was to the affected debtor. Tank's testimony was more general, often relating to his general practices rather than to his specific conduct in the Stacy cases.

Defendant Robert Tank is a bankruptcy petition preparer. On December 5, 1994, after seeing an advertisement for Tank's business, Susan Stacy met with Tank at his office to prepare Chapter 7 documents for filing. She explained to Tank that she had received a summons to small claims court and was in danger of

having her wages garnished, so the petition needed to be filed quickly. Stacy gave Tank a complete list of creditors, which included their addresses and the amounts owed. She filled out an application form used by Legal Alternatives and answered Tank's questions about her ownership of personal property.

On December 9, 1994, Stacy returned to Tank's office and signed the papers that Tank had prepared for her. She then delivered them to the court for a "minimum" filing.³ Stacy received a notice that she needed to file additional documents within 15 days. Stacy immediately contacted Tank to tell him that she needed the rest of the papers to file with the court. On January 3, 1995, Stacy signed the Statement of Intention and Statement of Financial Affairs. She understood from Tank that he was going to send the documents to the court and that he had taken care of everything. Those documents were not filed with the court, despite Tank's repeated assurances to Stacy that he was taking care of everything and not to worry. Stacy then received a notice from the court that her case was going to be dismissed for failure to file ordered documents. She contacted

³ The debtor is required to file schedules of assets and liabilities, of current income and expenditures, and of executory contracts and unexpired leases, a statement of financial affairs, and a statement of intention. Bankruptcy Rule 1007(b). Ordinarily, those schedules and statements are filed with the petition. Bankruptcy Rule 1007(c). If the petition is accompanied by a list of all the creditors and their addresses, the schedules and statements may be filed within 15 days after entry of the order for relief. Id.

Tank, who filed an objection to the dismissal on Stacy's behalf, representing that the documents had not been timely received because of "slow mail during the Christmas season." Tank continued to assure Stacy that the papers had been filed and not to worry. The papers had not been filed, and Stacy's case was dismissed on January 31, 1995 for failure to file documents.

In February 1995, Stacy returned to Tank for assistance in refiling the bankruptcy, this time jointly with her husband. She provided all of the information that was needed to file the joint petition. She told Tank that she and her husband did not own a car, but asked what would happen if they were to purchase one. She explained that they had very little personal property, just a few modest clothes and her wedding ring. They had no household furnishings, because they were living with Stacy's mother.

Tank completed the papers and Stacy and her husband signed them on May 29. Stacy sent the petition to the court for filing, and it was filed on June 1. After the joint petition was filed, the court notified the Stacys that numerous documents were missing and needed to be filed by June 16. Stacy contacted Tank and then went to his office to pick up the documents that had been missing or were deficient. She brought those documents to the court on June 9. The documents that Tank completed for the Stacys in early June contained different financial information than the documents he had completed for them in May. The first

Schedule B listed household furnishings valued at \$3,000, clothing valued at \$500, and jewelry valued at \$500. The second Schedule B listed in addition an automobile valued at \$1,700 and cash or other personal property valued at \$400. The second Schedule B no longer showed any jewelry. Their Schedule J expense budget had originally shown \$1,023 in expenses; the second Schedule J showed \$200 in expenses. Nothing in the Stacys' circumstances had changed between May and June to warrant the differences. Tank did not discuss the changes he had made with the Stacys.

The court returned those documents to the Stacys with an explanation of what was wrong with the documents. On June 14, Stacy received assistance from the court clerk in getting her papers in order for filing, and she successfully filed them on June 14.

III. DISCUSSION

The trustee alleges that Tank violated 11 U.S.C. § 110(i)(1) with respect to Stacy's first case by allowing the case to be dismissed for failure to file bankruptcy papers. I find that Tank violated section 110(i)(1), because Stacy's first case was dismissed for failure to file bankruptcy papers. Stacy testified that Tank led her to believe that he was going to file the papers for her. Although Tank testified that it was Stacy's responsibility to file the papers, and that it is not his

practice to file documents with the court, I find Stacy's testimony more credible. Stacy testified unequivocally that whenever Tank gave her papers to file, she filed them. This case was an important matter to her, and she had a good recollection about what had happened. There was no convincing evidence that the failure to file papers was the result of Stacy's negligence. Therefore, I find that a factual basis exists for certifying this violation to the District Court.

The trustee also claims that Tank violated section 110(i)(1) in the Stacys' second bankruptcy case by committing unfair or deceptive acts. Specifically, he asserts that Tank listed values of personal property on the Stacys' schedules that the Stacys did not own, that he failed to disclose that Susan Stacy had filed bankruptcy within the prior six years, and that Tank changed the Stacys' expense budget without informing the Stacys about the change.

The evidence supports all of those allegations. Susan Stacy testified that she told Tank that she and her husband did not own a car, that they owned no household furnishings and were living with Susan's mother, that they owned minimal clothing, and that the only jewelry they owned was Susan's wedding ring. The first Schedule B that Tank completed for the Stacys showed household furnishings valued at \$3,000, clothing valued at \$500, and jewelry valued at \$500. The second Schedule B that Tank

completed for the Stacys showed a car valued at \$1,700, household furnishings valued at \$3,000, clothing valued at \$500, and \$400 in cash or other personal property. The Stacys owned none of those things, other than a wedding ring worth less than \$500, and the Stacys never told Tank that they did own those things.

Although Tank had completed the first bankruptcy petition for Susan Stacy in December 1994, he did not disclose that filing in the second petition that he prepared in May 1995.

Tank completed two different expense budgets for the Stacys on their second petition, the first reflecting \$1,023 in expenses and the second reflecting \$200. He did not discuss the change with the Stacys or inform them that he was making the change. There were no changes in the Stacys' expenses that warranted the change in the budget.

I find that the evidence shows by a preponderance of the evidence that Tank committed each of the acts that the trustee alleges. I further find that each of those acts was unfair or deceptive under 11 U.S.C. § 110(i). Therefore, I find that a factual basis exists for certifying these violations to the District Court.

IV. CONCLUSION

Having found that Susan Stacy's first bankruptcy petition was dismissed as a result of Tank's failure to file bankruptcy papers, and that Tank engaged in unfair or deceptive practices in

the second bankruptcy by scheduling personal property that the Stacys did not own, by failing to disclose Susan Stacy's prior bankruptcy petition, and by altering the Stacys' expense budget without their knowledge or consent, I hereby certify those facts to the United States District Court for the District of Oregon, pursuant to 11 U.S.C. § 110(i), for consideration of the trustee's motion to require Tank to pay damages, costs and attorney fees as provided in that section.

ELIZABETH L. PERRIS
Bankruptcy Judge

cc: Peter C. McKittrick
Edward C. Hostmann
U. S. Trustee
Robert Tank
Susan I. Stacy and Edwin L. Stacy