


SO ORDERED.

SIGNED this 16 day of November, 2020.




Joseph N. Callaway
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION**

IN RE:

CASE NO.

ANGELA HOPE FARROW

**19-04431-5-JNC
CHAPTER 13**

DEBTOR

ORDER IMPOSING SANCTIONS

The matter before the court is the Motion for Sanctions and Order Enjoining Conduct (Dkt. 63; the Motion) filed by the Bankruptcy Administrator (the “BA”) on June 1, 2020. The Motion seeks the imposition of monetary sanctions and injunctive relief against Informational Services Group, Inc (“ISG”), TNT Rapid Refund, LLC (“TNT”), and Berdina R. Wright. An evidentiary hearing was held on November 10, 2020, by live video due to pandemic conditions with the court sitting in Greenville, North Carolina. Parker Rumley, Esq. appeared for the BA; Ms. Wright appeared pro se.¹

JURISDICTION

This matter is a core proceeding pursuant to 28 U.S.C. § 157, and this court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157, and 1334. This court has the authority to hear this matter pursuant to the General Order of Reference entered August 3, 1984 by the United States District Court for the Eastern District of North Carolina.

PLEADINGS AND HEARING

In the Motion and at the hearing, the BA contends the parties violated 11 U.S.C. §§ 110, 526, 527 and 528 with respect to the actions undertaken for or on behalf of Angela H. Farrow, the debtor in this case, resulting in the filing of her chapter 13 case on September 27, 2019. Monetary sanctions of \$23,310.00 and a permanent injunction prohibiting Ms. Wright, ISG and TNT from filing bankruptcy petitions in this district are sought. Ms. Wright responded to the Motion, collectively on behalf of herself, and ostensibly for ISG and TNT, on June 19, 2020 (Dkt. 64, the “Response”). The November 10 hearing was conducted by video with the agreement of the parties.

¹ As corporations, ISG and TNT must be represented by a licensed attorney approved to appear in this case.

Ms. Farrow and Ms. Wright testified, and Exhibits A through N offered by the BA were introduced and accepted into evidence without objection. At the conclusion of the hearing, the court announced its findings and conclusions. This Order memorializes the same.

FINDINGS OF FACT

Ms. Farrow is a resident of the Eastern District of North Carolina. As of September 2019, she had fallen behind on her residential mortgage payments for real property located at 40534 North End Road, Avon, North Carolina (the “Property”). The mortgage holder filed a state court foreclosure proceeding. About two weeks before the scheduled foreclosure sale, she received a mailer (Exhibit C; the “Mailer”) from Ms. Wright and ISG, the first paragraph of which states:

“We are a local housing counseling agency helping families stay in their home regardless of a foreclosure sale date. County records indicate that your home is scheduled to be sold on courthouse steps on **September 27, 2019**. It’s not too late to save your home, but you must take **ACTION** immediately.”

Desperate to halt the foreclosure sale and save her home, Ms. Farrow responded to the Mailer and contracted Ms. Wright seeking to utilize her services to halt the sale. On September 19, 2020, Ms. Wright emailed Ms. Farrow in reply and asked nine questions, including her full legal name, social security number, property address, and information about the lender and foreclosure. Ms. Wright informed Ms. Farrow that she needed this information to “complete the necessary paperwork.” *See* Exhibit D. On September 23, 2020, Ms. Farrow received, through email, a PayPal invoice from ISG seeking payment in the amount of \$1,500.00. On September 24, 2019, Ms. Wright sent another email to Ms. Farrow with several documents attached, including prepared and ready to file Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy) and Official Form 103A (Application for Individuals to Pay the Filing Fee in Installments.) *See* Exhibit E. The documents required Ms. Farrow’s signature.² No bankruptcy schedules of assets and liabilities, statement of financial affairs, or other required documentation for a full chapter 13 (or chapter 7) bankruptcy filing were provided.

Ms. Farrow was surprised to receive the bankruptcy papers from Ms. Wright as they had not previously discussed filing an accelerated bankruptcy petition. She telephoned Ms. Wright to discuss the same. Ms. Wright told Ms. Farrow that filing a petition was the only way to “freeze” the foreclosure sale and buy time to negotiate a workout solution on the mortgage; that the bankruptcy petition filing was purposefully incomplete; that only one of the installment payments would be made on the filing fee; and that the chapter 13 case would not be finalized or pursued.

Ms. Farrow agreed to follow Ms. Wright’s advice, believing that she had little choice to save her home from foreclosure. On September 25, 2019, she paid \$1,000.00 to a TNT account as instructed by Ms. Wright, even though the invoice was from ISG. *See* Exhibit F. On September 26, 2019, she received a PayPal invoice from ISG for the \$500.00 balance due ISG, which she paid on September 27, 2019. Ms. Wright confirmed that ISG and TNT were business entities owned by

² The BA alleged that Ms. Wright signed the documents for Ms. Farrow but based on the testimony of both witnesses, the court finds that Ms. Farrow signed the documents herself.

her. As instructed, Ms. Farrow signed Official Form 101 and Official Form 103 prepared by Ms. Wright and caused the same to be filed and with the court, initiating this bankruptcy case.

LEGAL ANALYSIS

Persons providing assistance to a consumer debtor in securing relief under the Bankruptcy Code in exchange for valuable consideration are considered to be a debt relief agency, as that term is defined by 11 U.S.C. § 101(12A). *See Millavetz v. United States*, 559 U.S. 229, 239 (2010) (“[W]e hold that attorneys who provide bankruptcy assistance to assisted persons are debt relief agencies within the meaning of the BAPCPA.”). A debt relief agency is subject to several statutory requirements when providing assistance to assisted persons, who are defined as “any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$192,450.” 11 U.S.C. § 101(3).

Section 110 of the Bankruptcy Code sought to address the proliferation of non-attorney bankruptcy petition preparers who are not working with or supervised by an attorney and attempts to sets standards for and limitations on these preparers to prevent them from providing legal advice and engaging in unauthorized practice of law. *Kuhns v. Trustee*, 2010 U.S. Dist. LEXIS 49625, 2010 WL 1990558, * 6 (N.D.W.V. May 18, 2010). Pursuant to 11 U.S.C. § 110(l)(1), a bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), or (h) may be fined not more than \$500.00 for each such failure.

Further, a debt relief agency is statutorily proscribed from “fail[ing] to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under [the Bankruptcy Code].” 11 U.S.C. § 526(a)(1). In related fashion, debt relief agencies are proscribed from making statements to clients that are “untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading,” 11 U.S.C. § 526(a)(2), or from misrepresenting the “services that such agency will provide to such person; or . . . the benefits and risks that may result if such person becomes a debtor in a case under [the Bankruptcy Code].” 11 U.S.C. § 526(a)(3).

The requirements of section 526(a) of the Bankruptcy Code together with sections 527 and 528 are mandatory, and failure to abide by the requirements therein subject a debt relief agency to liability for “the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys’ fees and costs . . .” 11 U.S.C. § 526(c)(2). Liability arises for a debt relief agency when, after notice and a hearing, the court finds such agency to have negligently or intentionally failed to comply with any requirement of sections 526, 527, or 528, or to have negligently or intentionally caused a case to be dismissed or converted by reason of failure to file a document in the case required to be filed by 11 U.S.C. § 521, or for negligently or intentionally disregarding material requirements of the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. 11 U.S.C. § 526(c)(2).

Sections 527 and 528 contain additional requirements for debt relief agencies. Within three (3) business days after the first date on which a debt relief agency offers to provide bankruptcy assistance to an assisted person, the agency is required to tender to the assisted person detailed

disclosures on the effects and consequences of filing for bankruptcy as outlined in 11 U.S.C. § 527(b). Further, debt relief agencies are required to execute a written contract with the assisted person clearly and conspicuously detailing the “services such agency will provide to such assisted person” and “the fees or charges for such services, and the terms of payment.” 11 U.S.C. § 528(a). This written contract must be executed within five (5) business days after the first date the debt relief agency provides bankruptcy assistance to the assisted person, and in any event must be executed prior to the filing of a petition under the Bankruptcy Code. *Id.*

CONCLUSIONS OF LAW

Ms. Farrow is an “an individual and, as shown, she does not have or hold nonexempt assets in excess of \$192,450.00. Ms. Wright, and not Ms. Farrow, prepared the bankruptcy accelerated petition forms filed in this case. Ms. Farrow is therefore an “assisted person” in this case as that term is defined by 11 U.S.C. § 101(3). She received certain “bankruptcy assistance,” as that term is defined by 11 U.S.C. § 101(4A) from Ms. Wright, and ISG and TNT as the entities receiving payment. Ms. Farrow did not receive a contract to provide bankruptcy services or a copy of the disclosures required under 11 U.S.C. § 527(b) from Ms. Wight, ISG, or TNT, nor did Ms. Wright or the companies provide Ms. Farrow with Official Form B2800 (Disclosure of Compensation of Bankruptcy Petition Preparer) and Official Form 119 (Bankruptcy Petition Preparer’s Notice, Declaration and Signature). Ms. Wright’s actions in preparing the present bankruptcy case for and offering legal advice to Ms. Farrow constitute bankruptcy petition preparation and more. Ms. Wright, along with ISG and TNT as the entities through which she communicated and collected fees, acted as a debt relief agency with respect to Ms. Farrow on the accelerated petition filed in the present bankruptcy case.

Further, Ms. Wright is not an attorney licensed in North Carolina (or any other state), and neither ISG nor TNT are a law firm. Even though Ms. Wright is not an attorney, she nevertheless advised Ms. Farrow on why and how to file for bankruptcy relief, selected the chapter under which Ms. Farrow would file and chose as a tactical decision to file only an accelerated partial petition filing “just to buy some time,” with the knowledge and intention for the case to be dismissed in forty-five days. *See* 11 U.S.C. § 521(i). Her actions in this regard were not taken in good faith, and Ms. Wright, along with ISG and TNT, thereby provided Ms. Farrow with bankruptcy assistance to her consequential detriment.³

As a result, the court concludes that the actions of Ms. Wright, and ISG and TNT as her agencies and fee collection artifices, violated: (a) 11 U.S.C. § 110(b)(1) due to the parties’ failure to sign and print the petition preparer’s name and address, and the failure to sign Official Form 101 and Official Form 103(A); (b) 11 U.S.C. § 110(b)(2)(a) in failing to provide Ms. Farrow a written official notice form prescribed by the Judicial Conference of the United States, and the failure to provide Official Form 119 to Ms. Farrow prior to preparing the Forms; (c) 11 U.S.C. §

³ Ms. Wright testified at the hearing that she received the \$1500 paid by Ms. Farrow for “mortgage modification services” and did not receive any funds to prepare the bare-bones bankruptcy petition. Therefore, in her words, the bankruptcy petition preparation work was a “pro bono” service. However, by her own admission, no mortgage modification services were provided by Ms. Wright. In fact, per the testimony at the hearing, the sole service performed by Ms. Wright for Ms. Farrow was the preparation of the two bankruptcy forms, and even that constituted mere scrivener services worth no more than the standard \$80 fee permissible under the rules of this court.

110(c)(1) in failing to place identifying information on Official Form 101 and Official Form 103A; (d) 11 U.S.C. § 110(e)(2) in providing legal advice to Ms. Farrow by advising her to file for bankruptcy relief and selecting the chapter under which she would file; (e) 11 U.S.C. § 526(a)(2) by advising Ms. Farrow to make a statement in a document filed in a case under this title that is untrue or misleading by checking the box on Official Form 101 indicating Ms. Farrow did not pay or agree to allow someone who is not an attorney to help her fill out her bankruptcy forms, and 11 U.S.C. § 526(a)(3)(A) in not disclosing and informing Ms. Farrow of the benefits and risks that may result from becoming a bankruptcy debtor; (f) 11 U.S.C. §§ 527 (a)(1) and 527(b) by failing to provide Ms. Farrow written disclosures; and (g) 11 U.S.C. § 528(a)(1) in failing to execute and provide Ms. Farrow with a copy of the fully executed and completed contract to provide bankruptcy services. Ms. Wright, ISG, and TNT are sanctioned and fined, jointly and severally, \$500.00 for each of the seven (7) violations set forth above, for a total of \$3,500.00. Ms. Farrow is also entitled to recover from Ms. Wright, ISG, and TNT the \$1,500.00 paid by her to Ms. Wright, ISG, and TNT, for the bankruptcy petition preparation services related to this matter as well as the \$310.00 filing fee incurred by Ms. Farrow, for a total of \$1,810.00.⁴

At the conclusion of the hearing, Ms. Wright agreed that she, ISG and TNT would not practice law, file or prepare (in any capacity) any future bankruptcy petitions in any federal bankruptcy court within North Carolina and would voluntarily agree to be enjoined from doing so in the future.

BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, it is HEREBY ORDERED, ADJUDGED AND DECREED:

1. Ms. Wright, ISG, and TNT are sanctioned and fined, jointly and severally, \$500.00 for each of the seven (7) violations of 11 U.S.C. §§ 110, 526, 527 and 528 stated above, for a total of \$3,500.00. Within thirty (30) days of the entry of this order, Ms. Wright, ISG, and TNT are directed to pay the \$3,500.00 total amount to the clerk of this court. If the \$3,500.00 total is not paid by that date, a show cause order will issue, and interest shall begin to accrue at the current applicable federal per annum interest rate pursuant to 28 U.S.C. § 1961(a).
2. Ms. Wright, ISG, and TNT, jointly and severally, are required to return to Ms. Farrow the sum of \$1,810.00, encompassing the \$1,500.00 paid by Ms. Farrow to Ms. Wright and the \$310.00 bankruptcy petition filing fee in this case. Within thirty (30) days of the entry of this order, Ms. Wright is directed to pay the \$1,810.00 stated amount directly to Ms. Farrow. If the \$1,810.00 is not paid to Ms. Farrow within thirty (30) days from entry of this order, a show cause order will issue, and interest shall begin to accrue at the current applicable federal per annum interest rate pursuant to 28 U.S.C. § 1961(a).
3. Ms. Wright, ISG, and TNT are enjoined from acting as a petition preparer, appearing as non-attorney representatives, filing petitions for relief or other documents for any

⁴ The court announced at the hearing the \$1,810.00 payment due to Ms. Farrow would be paid from the first sums paid by Ms. Wright, ISG, and TNT.

debtors or third parties, or otherwise participating in any existing or future bankruptcy cases before the United States Bankruptcy Courts for the Eastern District of North Carolina. Any violation of this directive will result in the issuance of a show cause order enforceable by the court's contempt powers.

4. The court retains full jurisdiction over the parties to enforce any portion of this order including enforcement of the payment and sanctions provisions and the injunction prohibiting future filings in bankruptcy cases in the named courts.

END OF DOCUMENT