



IT IS SO ORDERED.
Signed November 12, 2013

Arthur S. Weissbrodt
U.S. Bankruptcy

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 12-53777-ASW
]	
ROLANDO RAMIREZ and]	Chapter 13
CHRISTINE RAMIREZ,]	
]	
Debtors.]	

DECISION AND ORDER RE: MOTION TO REVIEW FEES

Before the Court is the unopposed motion of the United States Trustee ("UST") - represented by attorney John Wesolowski - to review fees charged by Dan Link and the Genesis Network, LLC ("Genesis") and to order disgorgement and impose fines for violations of several provisions of § 110. For the reasons set forth below, the motion is granted.

I. Facts

The following facts are taken from the Court's files as well as the declarations of Debtor Rolando Ramirez and attorney John Wesolowski.

In early 2012, Debtors' home at 1419 Dentwood Drive in San Jose was in foreclosure. On March 10, 2012, Mr. Ramirez contacted

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1 Genesis to ask for assistance in saving his home. Mr. Ramirez spoke
2 with Dan Link at Genesis. Mr. Link is not an attorney. Mr. Link
3 told Mr. Ramirez that Genesis could stop the foreclosure by filing
4 a bankruptcy case and preparing the paperwork to file a complaint
5 against Ocwen, which is the lender or loan servicer on Debtors'
6 mortgage.

7 That same day, Mr. Ramirez completed a Client Submission Form
8 and Service Agreement and returned them to Genesis. The Service
9 Agreement provided for an initial payment by Mr. Ramirez of \$2,250,
10 and monthly payments of \$1,000 thereafter. In return, Genesis
11 promised in the Service Agreement, among other things, to assist
12 with a "securitization audit," to assist with preparing document
13 templates, and provide ongoing education. Mr. Ramirez was also
14 told by Dan Link that Genesis would file a bankruptcy case to stop
15 the foreclosure.

16 Over the next few months, Mr. Ramirez obtained cashier's
17 checks from Star One Credit Union and deposited them in the account
18 of Daniel Link, as instructed by the Payment Options worksheet
19 (part of the Service Agreement), as follows: 3/9/12 - \$2,250;
20 4/6/12 - \$1,000; 5/11/12 - \$1,000; 6/8/12 - \$1,000; 7/10/12 -
21 \$1,000, for a total of \$6,250.

22 Debtors' contacts with Genesis were primarily with either Dan
23 Link or Cynthia Morales, via telephone and email. Genesis provided
24 Debtors with a copy of a document entitled "Real Estate
25 Securitization Audit" regarding the loan against their home.
26 Genesis may also have prepared a letter to Ocwen, requesting
27 documents and other information about the mortgage loan, although
28 Debtor does not know whether that letter was ever sent to Ocwen.

1 On May 2, 2012, Debtors learned that a foreclosure sale had
2 been set. Debtor Christine Ramirez contacted Cynthia Morales of
3 Genesis by e-mail about what to do. Ms. Morales responded by
4 e-mail on May 3, 2012, and sent Debtors a client questionnaire to
5 complete. She also advised Debtors to complete a credit counseling
6 class and provided a link to an agency that provides such
7 counseling. Debtors completed the questionnaire and returned it to
8 Genesis, and Genesis used the information in the questionnaire to
9 prepare a chapter 13 bankruptcy petition for Debtors.

10 Debtors received the completed petition from Genesis by e-mail
11 and filed it on May 17, 2012, commencing this chapter 13 case. On
12 July 1, 2012, Ms. Morales sent Debtors an e-mail informing Debtors
13 what they could expect at the meeting of creditors. Debtors
14 attended the meeting of creditors, which was continued to October
15 15, 2012. After the July 2 meeting of creditors, Debtors contacted
16 Genesis and asked about additional documentation that would be
17 needed; Ms. Morales responded that this was the complaint that was
18 to be filed against the lender on Debtors' home. However, the
19 chapter 13 case was dismissed on July 30, 2012 for failure to
20 provide pay advices to the chapter 13 trustee.

21 After the case was dismissed, Debtors again contacted Genesis
22 for their help. Dan Link told Mr. Ramirez that Debtors needed to
23 hire an attorney. Instead, Debtors filed another chapter 13 case
24 (Case No. 12-55717 ASW) which is still open.

25 On March 15, 2013, counsel for the UST sent an e-mail to Dan
26 Link and Cynthia Morales. The e-mail explained that Mr. Link and
27 Genesis had acted as bankruptcy petition preparers ("BPP") with
28 respect to the Ramirez chapter 13 case and requested that they

1 refund the entire fee paid by the Ramirezzes because Mr. Link and
2 Genesis had violated the Bankruptcy Petition Preparer Guidelines
3 for the Bankruptcy Court for the Northern District of California
4 ("Guidelines"). On March 21, 2013, Mr. Link sent an e-mail
5 response, which acknowledged receipt of the UST's e-mail and stated
6 that Mr. Link was seeking "attorney council [sic]." (Exhibit B to
7 Wesolowski declaration, docket no. 32)

8 Counsel for the UST thereafter received a letter from attorney
9 Timothy Peabody, dated March 19, 2013. Mr. Peabody stated that he
10 had been retained by Dan Link of The Genesis Network, LLC. In his
11 letter, Mr. Peabody admitted that Mr. Link assisted Mr. Ramirez in
12 filing his bankruptcy case, but stated that the fees charged were
13 unrelated to any bankruptcy work (Exhibit C to Wesolowski
14 declaration, docket no. 32).

15 On April 23, 2013, counsel for the UST responded to Mr.
16 Peabody by e-mail, stating, among other things, that Mr. Link had
17 prepared documents for filing in the bankruptcy court and that Mr.
18 Link had clearly acted as a BPP. Counsel for the UST again asked
19 for a refund of the full \$6,250 paid to Mr. Peabody's client
20 (Exhibit D to Wesolowski declaration, docket no. 32).

21 On May 6, 2013, counsel for the UST received a copy of an
22 e-mail sent by Dan Link to Tim Peabody. Mr. Link admitted in this
23 e-mail that he "assisted with the bk prep" for the Ramirezzes
24 (Exhibit E to Wesolowski declaration, docket no. 32).

25 On July 5, 2013, counsel for the UST sent another e-mail to
26 Mr. Peabody. Counsel for the UST again articulated that Mr. Link
27 had acted as a petition preparer, and had admitted to preparing
28 bankruptcy documents for Mr. Ramirez. Counsel for the UST again

1 demanded a refund of the full \$6,250 paid to Mr. Link and Genesis
2 (Exhibit F to Wesolowski declaration, docket no. 32).

3 Counsel for the UST has received no further response from Mr.
4 Peabody or Mr. Link, nor has any of the demanded refund been paid.

5 Mr. Link did not sign the bankruptcy petition, or place his
6 name, address and identifying number on the document. Mr. Link
7 inserted "N/A" at page 3 in the place where he should have
8 identified himself.

9 Mr. Link did not file a declaration along with the bankruptcy
10 petition disclosing that he received any fee from Mr. Ramirez to
11 prepare the bankruptcy petition. Nor did Mr. Link certify that he
12 notified Debtors of the maximum allowable fee chargeable by a BPP,
13 as required by § 110(h)(2).

14 Mr. Link did not provide for filing along with the bankruptcy
15 petition a declaration disclosing fees received from Debtors within
16 twelve months of the bankruptcy filing, as required under
17 § 110(h)(2).

18 Mr. Link did not provide for filing a notice signed by both
19 Debtors which informs Debtors in simple language that a BPP is not
20 an attorney and cannot give legal advice, as required under
21 § 110(b)(2)(A).

22 The UST filed this motion on September 4, 2013, and properly
23 served the motion on Mr. Link and his counsel. No opposition was
24 filed, nor did Mr. Link or his counsel appear at the hearing on
25 October 4, 2013.

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II. Law/Analysis

Section 110 defines a BPP as "a person, other than an attorney for a debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing." § 110(a)(1). Mr. Link has admitted he is not a licensed attorney, nor does it appear he was working under the supervision of a licensed attorney. Mr. Link and Genesis were compensated for the preparation of Debtors' bankruptcy documents. The Court finds that Mr. Link and Genesis therefore fall under the definition of a BPP.

Under § 110(h), the Court

shall disallow and order the immediate turnover to the bankruptcy trustee of any fee . . . found to be in excess of the value of the services . . . [or] found to be in violation of any rule or guideline promulgated or prescribed under paragraph [(h)](1).

§ 110(h)(3)(A).

Section 110(h) further states that

[a]ll fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g)."

§ 110(h)(3)(B).

The Guidelines provide:

[u]pon application of debtor(s), a creditor or any party-in-interest, including the United States Trustee, or on the court's own motion, fees of a bankruptcy petition preparer may be reduced below the amount allowed by these Guidelines. All fees may be forfeited where the bankruptcy petition preparer has acted incompetently or illegally, or has failed to comply with these Guidelines. In addition to liability for criminal penalties, all fees are subject to forfeiture in any case where the bankruptcy petition preparer has violated any provision of Bankruptcy Code §110.

Guidelines, ¶ 5.

1 The Court finds that Mr. Link's and Genesis's conduct violates
2 several sections of § 110 and warrants disgorgement of fees.

3
4 1. Failure to Disclose Identity of BPP

5 Section 110(b) states:

6 [a] bankruptcy petition preparer who prepares a document
7 for filing shall sign the document and print on the
document the preparer's name and address.

8 § 110(b)(1)(A). Section 110(c) provides that

9 [a] bankruptcy petition preparer who prepares a document
10 for filing shall place on the document, after the
preparer's signature, an identifying number that
11 identifies individuals who prepared the document.

12 § 110(c)(1).

13 Here, Mr. Link/Genesis prepared the Ramirez's bankruptcy
14 petition for filing but did not sign the documents or place a name,
15 address, or identifying number on the petition, or any of the
16 documents prepared for filing. The space where the petition
17 preparer is supposed to sign on page 3 of the petition is marked
18 "N/A." The Court finds that Mr. Link/Genesis therefore violated
19 §§ 110(b)(1)(A) and 110(c)(1).

20 2. Providing Legal Advice

21 Section 110(e)(2)(A) states that "[a] bankruptcy petition
22 preparer may not offer a potential bankruptcy debtor any legal
23 advice." This includes advising a debtor whether to file a
24 petition and advising a debtor concerning bankruptcy procedures and
25 rights. § 110(e)(2)(B). The Guidelines state specifically that a
26 BPP "may not instruct or advise debtor(s): (i) whether to file a
27 bankruptcy petition . . . ; (iii) how to respond to the bankruptcy
28 forms required in connection with the filing of the bankruptcy

1 case; (iv) what exemptions should be claimed" Guidelines, ¶
2 3.

3 Here, Mr. Link and Genesis provided legal advice to Debtors in
4 connection with their bankruptcy by advising Debtors that they
5 should file for bankruptcy to stop the foreclosure of their home.
6 Furthermore, Mr. Link/Genesis advised Debtors as to how they should
7 respond to questions at the meeting of creditors. Therefore, the
8 Court finds that Mr. Link and Genesis violated the Guidelines and
9 § 110(e).

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11 3. Failure to file Declaration and Certification

12 Section § 110(h)(2) requires that:

13 A declaration under penalty of perjury by the bankruptcy
14 petition preparer shall be filed together with the
15 petition disclosing any fee received from or on behalf of
16 the debtor within 12 months immediately prior to the
17 filing of the case, and any unpaid fee charged to the
18 debtor. If rules or guidelines setting a maximum fee for
19 services have been promulgated or prescribed under
20 paragraph [(h)](1), the declaration under this paragraph
21 shall include a certification that the bankruptcy
22 petition preparer complied with the notification
23 requirement under paragraph [(h)](1).

19 § 110(h)(2).

20 Mr. Link did not file the required declaration and did not
21 file the required certification notifying Mr. Ramirez of the
22 maximum fee a BPP can charge. The Court finds that Mr. Link thus
23 violated section 110(h)(2).

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25 4. Excessive Fees

26 Section 110(h)(3) provides:

27 The court shall disallow and order the immediate
28 turnover to the bankruptcy trustee any fee referred to in
paragraph [110(h)](2) found to be in excess of the value
of any services—

1 (i) rendered by the bankruptcy petition preparer during
2 the 12-month period immediately preceding the date of the
3 filing of the petition; or(ii) found to be in violation
of any rule or guideline promulgated or prescribed under
paragraph [110(h)](1).

4 § 110(h)(3).

5 Under the Guidelines, "the maximum allowable charge for a
6 bankruptcy petition preparer's services is **\$150** . . ." (emphasis in
7 original). Guidelines, ¶ 1.

8 The Court finds that (1) Mr. Link collected the fees within
9 twelve months of the filing of the petition, (2) the purported
10 services of Mr. Link and Genesis were of minimal value to the
11 Debtors, and (3) Mr. Link violated § 110 and the Guidelines. Under
12 the guise of a foreclosure rescue service, Mr. Link told Mr.
13 Ramirez that he could stop the foreclosure by filing for bankruptcy
14 and preparing a complaint against the lender.

15 The Court finds that the \$6,250 collected by Mr. Link should
16 be disgorged in full because it exceeds the value of any service
17 provided, and because it exceeds the maximum \$150 fee a BPP can
18 charge a debtor pursuant to the Guidelines. See In re Reynoso, 315
19 B.R. 544, 553 (9th Cir. BAP 2004) (bankruptcy court did not abuse
20 its discretion in ordering disgorgement of all fees based on a
21 finding that value of services provided by BPP was negligible).

22
23 5. Damages

24 Section 110(i)(1) states:

25 If a bankruptcy petition preparer violates this
26 section or commits any act that the court finds to be
27 fraudulent, unfair, or deceptive, on the motion of the
debtor, trustee, United States trustee . . . , and after
notice and a hearing, the court shall order the
bankruptcy petition preparer to pay to the debtor-

28 (A) the debtor's actual damages;

1 (B) the greater of-

2 (i) \$2,000; or

3 (ii) twice the amount paid by the debtor to the
4 bankruptcy petition preparer for the preparer's
services[.]

5 § 110(i)(1).

6 Making false statements to the Court, failing to disclose all
7 fees collected, and intentionally concealing one's involvement as a
8 BPP constitute fraudulent, unfair and deceptive conduct. See
9 Reynoso, 315 B.R. at 553. Similarly, engaging in the unauthorized
10 practice of law is fraudulent, unfair, and deceptive conduct. Id.

11 Mr. Link failed to disclose any fees he collected within the
12 twelve months prior to filing as required by § 110(h)(2), engaged
13 in the unauthorized practice of law, and intentionally concealed
14 his involvement as a BPP by failing to disclose his name, address,
15 and social security number on the petition. Mr. Link also
16 collected \$6,250 from Mr. and Mrs. Ramirez on the representation
17 that he would stop the foreclosure of their home. It appears that
18 Mr. Link took advantage of the Ramirez family's desperate
19 situation, taking thousands of dollars from them while promising
20 services that he could not deliver. Once the bankruptcy case was
21 dismissed, Mr. Link told Mr. Ramirez to hire an attorney.

22 Based on the foregoing, the Court finds that Mr. Link and
23 Genesis committed multiple violations of § 110 and engaged in
24 fraudulent, unfair, and deceptive conduct. In addition to
25 disgorging the entire \$6,250 fee collected from Mr. Ramirez, Mr.
26 Link should pay Mr. and Mrs. Ramirez's actual damages in the amount
27 of \$281 for the filing fee paid in this dismissed case pursuant to
28 § 110(i)(1)(A), and should pay Mr. and Mrs. Ramirez general damages

1 in the amount of \$12,500 pursuant to § 110(i)(1)(B), which is twice
2 the amount Mr. Ramirez paid to Mr. Link for his services. See
3 §§ 110(i)(1)(A) and (B).

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5 6. Fines

6 Section 110(1) allows a court, upon motion by the UST, to
7 impose additional fines for each failure to comply with any
8 provision of subsection (b), (c), (d), (e), (f), (g), or (h), up to
9 \$500 for each such failure. § 110(1)(1). Moreover, the court
10 "shall triple the amount of a fine assessed under paragraph (1) in
11 any case in which the court finds that the bankruptcy petition
12 preparer- . . . prepared a document for filing in a manner that
13 failed to disclose the identity of the bankruptcy petition
14 preparer." § 110(1)(2). Fines imposed under this subsection
15 "shall be paid to the United States trustees, who shall deposit an
16 amount equal to such finds in the United States Trustee Fund."
17 § 110(1)(4)(A).

18 As noted above, Mr. Link failed to comply with subsections
19 (b), (c), (e) and (h) in seven ways. Mr. Link:

20 (1) violated § 110(b)(1) by failing to identify himself
21 anywhere on the bankruptcy documents;

22 (2) violated § 110(c)(1) by failing to place his signature or
23 identifying number anywhere on the Ramirez's bankruptcy petition;

24 (3) violated § 110(b) by failing to provide written notice to
25 Mr. and Mrs. Ramirez outlining the role of a BPP and to include the
26 signed written notice in the filings;

1 (4) violated §§ 110(h) (1) and (h) (2) by failing to certify
2 that he provided Mr. and Mrs. Ramirez with notice of the maximum
3 fee allowed by the Guidelines;

4 (5) violated § 110(e) (2) by inappropriately offering legal
5 advice to Mr. and Mrs. Ramirez;

6 (6) violated § 110(h) (2) by failing to file a declaration
7 disclosing the fee he received from Mr. Ramirez; and

8 (7) violated § 110(h) (1) by charging Mr. Ramirez more than the
9 maximum allowable fee of \$150 set by the Guidelines.

10 Based on the foregoing, the Court will impose a fine of \$150
11 for each of the seven failures to comply with § 110, as authorized
12 under § 110(1) (1) ($\$150 \times 7 = \$1,050$). Although the UST requests
13 that this Court impose the maximum allowed fine of \$500 per
14 violation, the Court declines to do so, as there is no evidence
15 before the Court that Mr. Link or Genesis have engaged in a pattern
16 of violating § 110.

17 Because Mr. Link prepared Mr. and Mrs. Ramirez's bankruptcy
18 documents in a manner that failed to disclose his identity,
19 pursuant to § 110(1) (2) the Court will triple the fine, for a total
20 amount of \$3,150 ($\$1,050 \times 3$) to be paid to the UST.

21	Statute	Amount	Payee
22	11 USC § 110(h) (3)	\$ 6,250	Debtors
23	11 USC § 110(i) (1) (A)	\$ 281	Debtors
24	11 USC § 110(i) (1) (B)	\$12,500	Debtors
25	Subtotal	\$19,031	Debtors
26	11 USC § 110(1) (1)-(2)	\$ 3,150	UST
27	TOTAL	\$22,181	

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III. Conclusion

In sum, Mr. Link and/or Genesis shall (1) disgorge and refund to Debtors the entire \$6,250 fee charged; (2) pay Debtors their actual damages of \$281; (3) pay Debtors general damages of \$12,500; and (4) pay the UST a fine of \$3,150.

IT IS SO ORDERED.

***** END OF DECISION AND ORDER *****

Court Service List

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