

CONSUMER BANKRUPTCY

Suspended Bankruptcy Attorney and Paralegal Punished

Pair flaunted bankruptcy petition preparer statute

By Craig D. Robins

Non-attorney bankruptcy petition preparers can get into a heap of trouble if they do not accurately follow certain Bankruptcy Code provisions designed to protect consumer debtors. This was evident in a case just decided by Judge Carla E. Craig, the Chief Bankruptcy Judge of the Eastern District of New York, sitting in the Brooklyn Bankruptcy Court.

To make matters more interesting, the case also involves disgraced attorney, Peter J. Mollo, who was the subject of my column in May 2012. Despite having been suspended from practicing law earlier this year, Mollo continued to represent clients and tried to get away with it by forging another attorney's name on several bankruptcy petitions which he then

filed. Judge Craig sanctioned him in a decision dated March 22, 2012. *In re: Clyde Flowers*, (01-12-40298-cec, Bankr. E.D.N.Y.)

It seems that Mollo didn't learn his lesson and immediately embarked upon a new scheme to circumvent his suspension by having his paralegal, Anna Pevzner, continue to meet with debtors and prepare petitions. When the Office of the United States Trustee learned about this conduct in four separate Chapter 7 consumer cases, it quickly brought proceedings against both of them seeking sanctions and disgorgement of fees.

After several evidentiary hearings, Judge Craig issued a 31-page decision on



Craig D. Robins

September 28, 2012, in which she severely sanctioned the pair, and in doing so, discussed the various statutory requirements that bankruptcy petition preparers must adhere to. *In re Edith L. Moore, et. al.*, (12-41111-cec, Bankr. E.D.N.Y.).

A bankruptcy petition preparer (BPP) is essentially a non-attorney who prepares bankruptcy petition legal forms. Congress was so concerned about vulnerable debtors who had been victimized by non-attorney petition preparers who rendered bad legal advice and charged unreasonable fees that in 1994 it implemented Bankruptcy Code section 110 which is devoted to regulating their services.

That section defines a BPP as a person,

other than an attorney or an employee of an attorney, who prepares a bankruptcy court document for a fee.

Since BPPs are non-attorneys, they are not permitted to give legal advice and may only type documents and charge a reasonable fee for doing so. That means that they cannot assist with determining what assets are exempt or what exemptions statutes to use, nor can they suggest what chapter to file. They cannot offer advice as to whether a debt is dischargeable or whether a car loan should be reaffirmed.

In addition, BPPs may not collect, receive, or handle court filing fees in connection with a bankruptcy case. That means that BPPs cannot file petitions with the bankruptcy court. BPPs may not use the word "legal" or any similar term in any

(Continued on page 30)

advertising. This is to prevent them from misleading the public into thinking that they are authorized to practice or render legal advice.

If a BPP prepares a petition, the BPP must sign it (there is a special area of the petition form devoted to this) and print his or her name, address and Social Security number. The BPP must also disclose, under penalty of perjury, any fee or compensation received for preparing the documents, and the BPP is obligated to file a declaration attesting to this within ten days of the filing of the petition.

Code section 110 also provides for the assessment of various penalties for BPPs who act negligently or with intentional disregard for the Bankruptcy Code and Rules, or if the BPP commits any fraud, or unfair or deceptive act. In such instances the court can award actual damages, and the greater of \$2,000 or twice the amount paid to the BPP and reasonable attorney's fees and costs.

In addition, each failure to comply with a particular subsection of the statute, such as failing to sign the petition, include the Social Security number, disclose the fee, etc., is punishable by a fine of not more than \$500. The statute

also requires the court to triple the fines if the BPP failed to disclose his or her identity. As you will see, it was this provision that really socked Mollo and Pevzner big time.

After Mollo was sanctioned in March, potential clients were still contacting him from his advertising, which he failed to discontinue. Rather than turn them away, he had Pevzner, his paralegal of six years, meet with them, and in some instances, he met with the clients as well. She then prepared the bankruptcy petitions and rendered legal advice in doing so. She had the debtors sign a retainer agreement which contained the name of a different attorney who did not have anything to do with these cases.

At the hearing, Pevzner admitted that she prepared the petitions and claimed that she was not an employee of Mollo and worked strictly as a "volunteer" for him without salary. Pevzner testified that she was familiar with Bankruptcy Code section 110. Although Code section 110 required the BPP to sign the petition and provide a declaration as to legal fees, she did not do that either, claiming that this was an "honest mistake."

Judge Craig stated that both Mollo

and Pevzner were not credible witnesses and concluded that Pevzner repeatedly violated a number of subsections of the statute and that they both engaged in the unauthorized practice of law. The judge pointed out that Mollo continued to hold himself out as a bankruptcy attorney, despite his suspension, and despite his representations to the court in the earlier case.

It was clear to Judge Craig that Pevzner was the BPP, as she prepared the petitions. However, the judge applied an unusual theory and held that Mollo was vicariously liable for Pevzner's violations. The judge rejected Pevzner's claim that she was a volunteer; instead concluding that she continued to be a compensated employee under Mollo's direction. Thus, the court found that Mollo also violated the same provisions of section 110 under the doctrine of vicarious liability.

As for punishment, Judge Craig directed both of them to disgorge all fees received (\$3,100), and in addition, fined them jointly and severally \$15,000. However, it did not stop there. Because Pevzner failed to disclose on the petitions that she was the BPP, Judge Craig stated that she was required to triple the fine to

\$45,000 as provided by the statute. Hopefully, this deceitful duo has finally learned their lesson.

As with many things, consumers get what they pay for. A BPP cannot give legal advice and at most, can only act as a data entry clerk. There are no requirements that a BPP take any courses or be certified. Yet, bankruptcy is a highly complex area of the law. There are many horror stories about consumers who lost valuable assets, believing that they were exempt, because a bankruptcy petition preparer drafted the petition.

The Office of the U.S. Trustee takes BPP improprieties very seriously. Last year they brought 504 actions against BPPs across the country.

Note: Craig D. Robins, a regular columnist, is a Long Island bankruptcy lawyer who has represented thousands of consumer and business clients during the past twenty years. He has offices in Coram, Mastic, West Babylon, Patchogue, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: www.BankruptcyCanHelp.com and his Bankruptcy Blog: www.LongIslandBankruptcy-Blog.com.