

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In re: Case No. A03-00720-DMD

Chapter 7

LAWRENCE C. THOMPSON and  
KIMBERLEY A. SMITH-THOMPSON,

Debtors.

LAWRENCE C. THOMPSON and  
KIMBERLEY A. SMITH-THOMPSON,

Adversary No. A03-90089-DMD

Plaintiffs,

v.

WE THE PEOPLE ALASKA, L.L.C. and  
WE THE PEOPLE FORMS AND  
SERVICE CENTERS USA, INC.,

Defendants.

**CERTIFICATION TO THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
[Re: Violations of 11 U.S.C. § 110]**

This is an action for injunctive relief and damages against two bankruptcy petition preparers under 11 U.S.C. § 110 and A.S. 45.50.471-45.50.561. The bankruptcy court has jurisdiction pursuant to 28 U.S.C. § 1334(b) and the district court's order of reference. After trial of this matter on September 23, 2004, the bankruptcy court has determined that violations of § 110 have occurred, and certifies this matter to the United States District Court for the District of Alaska pursuant to 28 U.S.C. § 157(c)(2), 11 U.S.C. § 110(i)(1) and AK LBR 9033-2(d).

The facts in this case establish that the defendants have committed 26 violations of 11 U.S.C. § 110, including subsections (b), (c), (d), (f) and (g), with possible fines totaling \$13,000.00 payable to the United States. I recommend a reduction in fines if the defendants comply with the provisions of an injunction prohibiting further violations of § 110.

Section 110 also permits a prevailing party to recover damages, attorney's fees and costs from a bankruptcy petition preparer. I find that the plaintiffs have suffered no actual damages on account of the services rendered by the defendants. The plaintiffs are, however, entitled to recover statutory damages, plus their reasonable attorney's fees and costs, from the defendants.<sup>1</sup> I recommend that the plaintiffs be awarded the sum of \$4,000.00 (\$2,000.00 from each defendant), plus their reasonable attorney's fees and costs, in accordance with 11 U.S.C. § 110(i)(1)(B) and (j)(3).

My findings of fact and conclusions of law are in narrative form, below.

#### Factual Background

We the People Alaska, L.L.C. (WTPA) is a franchisee of We the People Forms & Service Centers USA, Inc. (WTPUSA). WTPUSA is headquartered in Santa Barbara, California. Judy Brozek is a resident of Anchorage, part-owner of the WTPA franchise and manager of their local store. The debtors, Lawrence L. Thompson and Kimberley A. Smith-Thompson, are former Alaska residents who now reside in Minnesota. They used the services of WTPA to file their initial bankruptcy paperwork in this court, and subsequently initiated this adversary proceeding for violations of 11 U.S.C. § 110.

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<sup>1</sup>11 U.S.C. § 110(i)(1); (j)(3).

WTPA provides “document preparation services,” copies and credit reports for clients seeking to file chapter 7 bankruptcies.<sup>2</sup> Typically a bankruptcy client receives forms, a bankruptcy overview and a questionnaire-workbook from WTPA at the first meeting with a representative. A credit report is optional and WTPA receives a \$50.00 fee for obtaining the report. After filling out the questionnaire, the client returns it to the WTPA location in Anchorage and pays fees. WTPA then faxes the questionnaire to a paralegal who types information from the questionnaire into the official bankruptcy forms. The paralegal is employed by WTPUSA. The paralegal’s name and social security number are not placed on the documents, nor is her employer identified. Instead, WTPA is named as the bankruptcy petition preparer. The completed bankruptcy forms are mailed back to WTPA in Anchorage, where they are signed by the client.

WTPA advertised heavily in 2003. It had a sign near its business premises advertising “Legal Document Services.” It advertised its services in the ACS and MTA yellow pages under a general section for attorneys and a specialty section for bankruptcy attorneys. WTPA also regularly advertised in the Anchorage Daily News.

Kimberley A. Smith-Thompson and her husband, Lawrence C. Thompson, were interested in filing a chapter 7 bankruptcy. They had read advertisements about WTPA and seen their office. Ms. Smith-Thompson went to the WTPA office. She paid \$50.00 for a credit report in mid-May of 2003. She went to the office again on June 10, 2003, signed a document preparation agreement with WTPA, and paid \$415.00 to WTPA. The bill was itemized at \$199.00 for document preparation, \$200.00 for filing fees and \$15.00 for copying charges. Ms. Smith-Thompson received forms, a questionnaire-workbook for preparing the forms and a publication called “Bankruptcy Overview” from WTPA. Ms. Smith-Thompson returned to the office the following day with the completed questionnaire. WTPA faxed the questionnaire to a Colorado paralegal employed by WTPUSA. The paralegal prepared the

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<sup>2</sup>WTPA also prepares documents for divorces, living trusts, incorporations and other purposes.

debtors' bankruptcy documents – the petition, schedules, statement of financial affairs, statement of intent, and verification of matrix – and mailed them to WTPA in Alaska, where they were signed by the Thompsons. The documents were then filed with this court on June 30, 2003.

On their Schedule C, Property Claimed as Exempt, the Thompsons initially claimed Alaska state exemptions, including an Alaska homestead exemption for real property in Minnesota. Following retention of counsel, they filed an amended Schedule C in August of 2003 taking federal exemptions. The trustee has objected to the debtors' amended claim of exempt property but to date no hearing on the objection has been held. The debtors initiated this adversary proceeding on August 11, 2003. A preliminary injunction prohibiting certain business practices and advertising by WTPA was entered on October 1, 2003, and continues until final judgment is entered in this proceeding.

#### Discussion of 11 U.S.C. § 110

Congress enacted 11 U.S.C. § 110 to remedy abuses it perceived in the preparation of bankruptcy petitions and schedules by bankruptcy petition preparers [BPPs].

[Section 110] adds a new section to chapter 1 of Title 11 United States Code to create standards and penalties pertaining to bankruptcy petition preparers. Bankruptcy petition preparers not employed or supervised by any attorney have proliferated across the country. While it is permissible for a petition preparer to provide services solely limited to typing, far too many of them provide legal advice and legal services to debtors. These preparers often lack the necessary legal training and ethics regulation to provide such services in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their

rights both inside and outside the bankruptcy system.<sup>3</sup>

Section 110 contains detailed provisions regulating not only the preparation of bankruptcy documents by BPPs, but their business practices. BPPs must identify themselves on any bankruptcy documents that they have prepared and must provide copies of these documents to their clients.<sup>4</sup> Unlike an attorney, a BPP cannot execute documents on behalf of his client.<sup>5</sup> BPPs cannot use the word “legal” in any advertisement for their services, nor can they collect court fees from their clients.<sup>6</sup> If a BPP violates any of these provisions, a fine of up to \$500 can be imposed, for each violation.<sup>7</sup> Damages, injunctive relief, attorney’s fees and costs can also be imposed against a BPP.<sup>8</sup> Under § 110(i)(1), “if a bankruptcy petition preparer violates this section [§ 110] . . . the bankruptcy court shall certify that fact to the district court.” After a hearing, the district court must then determine and order the BPP to pay to the debtor:

- (A) the debtor’s actual damages;
- (B) the greater of –
  - (i) \$2,000; or

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<sup>3</sup>*Ferm v. United States Trustee (In re Crawford)*, 194 F.3d 954, 957 (9th Cir. 1999), *cert. denied*, 528 U.S. 1189 (2000), *citing* H.R. Rep. No. 103-835, at 56 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3365.

<sup>4</sup>11 U.S.C. § 110(b)(1), (c)(1), (d)(1).

<sup>5</sup>11 U.S.C. § 110(e)(1).

<sup>6</sup>11 U.S.C. § 110(f)(1), (g)(1).

<sup>7</sup>11 U.S.C. § 110(b)(2), (c)(3), (d)(2), (e)(2), (f)(2), (g)(2), and (h)(4).

<sup>8</sup>11 U.S.C. § 110(i) and (j).

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorney's fees and costs in moving for damages under this subsection.<sup>9</sup>

### Violations of § 110 by the Defendants

In this proceeding, the plaintiffs alleged that the defendants have violated virtually every provision of the statute. I find that both defendants have committed numerous violations of § 110, and recommend the imposition of fines and the issuance of a permanent injunction. Each of the defendants' violations is discussed below, in turn.

First, 11 U.S.C. § 110(b)(1) specifies that "[a] bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address." A BPP who fails to comply may be fined up to \$500.00 for each failure unless the failure is due to reasonable cause.<sup>10</sup> I find that WTPA and WTPUSA have violated § 110(b)(1). On the debtors' petition, schedules, statement of financial affairs and statement of intent, WTPA was named as the BPP. A social security number was listed, along with an address and phone and fax numbers. The documents were signed and dated by Judy Brozek, the manager and part-owner of the WTPA franchise. The only document submitted with the initial bankruptcy paperwork that did not contain this information was the verification of matrix. It was not signed by Brozek, nor was WTPA listed as having prepared that document.

WTPA did not prepare these documents, however. They were prepared by a Colorado paralegal, an employee of WTPUSA, after Ms. Brozek faxed her the questionnaire. Neither WTPUSA nor the Colorado paralegal was disclosed as a BPP on these documents.

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<sup>9</sup>11 U.S.C. § 110(i)(1).

<sup>10</sup>11 U.S.C. § 110(b)(2).

WTPUSA and WTPA have each violated § 110(b)(1) in five instances by failing to disclose WTPUSA's name and address on the petition, schedules, statement of financial affairs, statement of intent and the verification of matrix. Moreover, there was no showing of reasonable cause by WTPUSA or WTPA for their failure to include this information. They are each subject to a maximum of five \$500.00 fines, for a total of \$2,500.00 apiece. The fines are not payable to the plaintiffs, however. They are payable to the United States Treasury.<sup>11</sup>

The defendants have also violated 11 U.S.C. § 110(c), which requires BPPs to place "an identifying number that identifies individuals who prepared the document," after the BPP's signature. The "identifying number" is the "Social Security account number of each individual who prepared the document or assisted in its preparation."<sup>12</sup> Judy Brozek signed the documents as a BPP, and her franchise, WTPA, was also listed as a BPP. But the Colorado paralegal and her employer, WTPUSA, were not identified on the petition, schedules, statement of financial affairs, statement of intent, or verification of matrix. Because of this failure, WTPA and WTPUSA are again subject to a maximum of five \$500.00 fines, for a total of \$2,500.00 apiece, to the United States Treasury.

11 U.S.C. § 110(d)(1) requires a BPP to furnish the debtor with a copy of any document it has prepared. Ms. Brozek says she furnished Ms. Smith-Thompson with a copy of all documents. Ms. Smith-Thompson alleges that she received copies of most of the documents but was missing some pages. I find Ms. Brozek to be more credible on this issue. No violation of 11 U.S.C. § 110(d)(1) occurred.

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<sup>11</sup>*Kangaroo v. Arotionians (In re Kangaroo)*, 250 B.R. 115, 125 (Bankr. C.D. Cal. 2000).

<sup>12</sup>11 U.S.C. § 110(c)(2). The Official Bankruptcy Forms reiterate this requirement, as well. In the spaces on the forms for BPP signatures, the forms ask for "Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document," and provide a space for this information. The Official Forms also state, "If more than one person prepared this document, attach additional sheets conforming to the appropriate form for each person." See Official Bankruptcy Forms 1 [Petition], 6 [Schedules], 7 [Statement of Financial Affairs], and 8 [Individual Debtor's Statement of Intention].

Under 11 U.S.C. § 110(f)(1), a BPP “shall not use the word ‘legal’ or any similar term in any advertisements, or advertise under any category that includes the word ‘legal’ or any similar term.” WTPA has violated both prongs of this subsection. It advertised “legal document services” on a sign outside its office. It also advertised in two different yellow page directories, under a general attorney classification and the more specialized class of bankruptcy attorneys. The yellow page advertisements are violations of § 110(f)(1).<sup>13</sup> Each violation is subject to a maximum fine of \$500.00.<sup>14</sup> There were a total of five violations: four regarding yellow page advertising and one for the sign. WTPA is subject to a maximum fine of \$2,500.00 under § 110(f)(2).

11 U.S.C. § 110(g)(1) prohibits a BPP from collecting court fees from a debtor. Here, WTPA collected a \$200.00 filing fee from the debtor in violation of the statute. A possible fine of up to \$500.00 can be imposed against WTPA under 11 U.S.C. § 110(g)(2).

The Thompsons also allege that WTPA violated 11 U.S.C. § 110(h)(1) by failing to file a declaration disclosing the \$50.00 fee they paid for a credit report. The disclosure of compensation form filed by WTPA in this case did not disclose the credit report fee or the \$15.00 charged for copying. Subsection 110(h) does not impose an automatic fine for failing to disclose this information. It does, however, authorize the court to disallow and order the turnover of any fee “found to be in excess of the value of services rendered [by the BPP] for the documents prepared.”<sup>15</sup>

The Thompsons allege that the fees charged by WTPA, including the \$199.00 charge for typing, were excessive. Their argument is not based on the size of the fee, however. Instead, they claim WTPA’s services were worthless because Judy Brozek incorrectly advised Ms. Smith-Thompson to elect the state rather than the federal exemptions

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<sup>13</sup>2 COLLIER ON BANKRUPTCY, ¶ 110.06 at 110-12 (15th ed. revised 2004).

<sup>14</sup>11 U.S.C. § 110(f)(2).

<sup>15</sup>11 U.S.C. § 110(h)(2).



on land and a garage located in Minnesota. The Alaska homestead exemption does not apply to property in Minnesota, and this is one basis for the trustee's objection to the Thompsons' claim of exemption. Because the Thompsons are now in jeopardy of losing their Minnesota property, they contend the services provided by WTPA were of no value. Ms. Brozek denies advising Ms. Smith-Thompson to select state exemptions.

Ms. Brozek is not an attorney and is not qualified to give the debtors legal advice about which exemptions to select. The evidence does not support the Thompsons' claim that she had done so, however. In the first meeting Ms. Smith-Thompson had with WTPA, in May of 2003, she advised Ms. Brozek that she had a large amount of cash and wanted to file bankruptcy. Ms. Brozek told her to see an attorney. Ms. Smith-Thompson purchased a credit report and left. She returned to the WTPA office on June 10, 2003, and told Ms. Brozek she had to file bankruptcy. On this visit, Ms. Smith-Thompson signed a document preparation agreement which advised that the owners and employees of WTPA were not attorneys and were prohibited from giving legal advice. Ms. Smith-Thompson paid Ms. Brozek \$415.00 for fees and costs and was given the standard bankruptcy package WTPA provided its clients – forms, a questionnaire-workbook for preparing the forms and a bankruptcy overview publication.

Ms. Smith-Thompson returned to WTPA the following day, June 11th, with the completed questionnaire-workbook. In spite of the caveats in the document preparation agreement, which cautioned that WTPA personnel could not give legal advice, Ms. Smith-Thompson asked Ms. Brozek whether she could exempt land in Minnesota under the Alaska state exemptions. Ms. Brozek said that the question was between Ms. Smith-Thompson and the trustee; she could not answer it. At no time did Ms. Brozek instruct Ms. Smith-Thompson to take the state exemptions. The Thompsons' trial testimony to the contrary was not credible and varied widely from their deposition testimony. Moreover, Ms. Smith-Thompson had already selected state exemptions on the WTPA forms before she returned

the questionnaire.<sup>16</sup> The weight of the evidence favors Ms. Brozek. She did not advise the debtors about exemptions. WTPA did not provide worthless legal advice to the debtors about exemptions. Moreover, the total of the fees the debtors paid WTPA for typing and other services, \$265.00, was not excessive. The plaintiffs do not have a claim under § 110(h).

11 U.S.C. § 110(i)(1) requires the bankruptcy court to certify certain facts to the district court for a determination of damages in three instances: 1) if a case is dismissed because of a BPP's failure to file paperwork or a BPP's negligence or intentional disregard of the provisions of the Bankruptcy Code; 2) if a BPP violates § 110; or 3) if a BPP commits a fraudulent, unfair or deceptive act.<sup>17</sup> No dismissal occurred here, nor have the defendants committed fraudulent, unfair or deceptive acts. The Thompsons contend WTPA committed a fraudulent, unfair or deceptive act when Ms. Brozek advised them to take state exemptions with regard to real property located in Minnesota. However, as noted above, the evidence at trial did not support this contention. Ms. Brozek did not give legal advice regarding exemptions.

Both WTPA and WTPUSA have violated provisions of § 110, however. Specifically, as discussed above, they have each violated § 110(b)(1) and (c)(1). WTPA has also violated § 110(f)(1) and (g)(1). The defendants are therefore liable for the debtors' actual damages, if any, as well as statutory damages, plus reasonable costs and attorney's fees.<sup>18</sup> I find the debtors have suffered no actual damages on account of the defendants' services. The Thompsons were cautioned that WTPA could not give legal advice, and had already selected Alaska exemptions before submitting their questionnaire to WTPA for their bankruptcy filing. Ms. Brozek did not advise the debtors which exemption scheme to select.

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<sup>16</sup>See Defs.' Ex. A, I.

<sup>17</sup>11 U.S.C. § 110(i)(1).

<sup>18</sup>11 U.S.C. § 110(i)(1).

Any damages the debtors may suffer from their selection of exemptions is due to their own failure to consult with a qualified bankruptcy attorney before filing their petition.

The debtors are nonetheless entitled to recover statutory damages of \$2,000.00 from each of the defendants for their violations of § 110, as well as reasonable attorney's fees and costs.<sup>19</sup> A BPP cannot plead ignorance of § 110's provisions to escape imposition of the statutory fine; "[i]ndeed, the preparer's lack of knowledge of the law is usually what renders the preparer's services deficient."<sup>20</sup> The availability of statutory damages and attorney's fees to a successful plaintiff under § 110(i)(1) encourages both consumers and attorneys to act as "private attorneys general" for the enforcement of § 110's provisions.<sup>21</sup>

11 U.S.C. § 110(j) allows a court to enjoin a BPP from engaging in any conduct that violates § 110. If, in spite of an injunction, the BPP continues to violate the provisions of § 110, the court may enjoin the BPP from taking further actions as a BPP.<sup>22</sup> In this proceeding, this court earlier granted injunctive relief against WTPA with regard to its collection of court fees from debtors and its practice of advertising in the yellow pages.<sup>23</sup> Although WTPA has complied with that injunction, I feel the injunction should be made permanent due to the gravity of the prior violations and the further violations of § 110 which have been committed by both defendants. These violations include the following:

- five violations of 11 U.S.C. § 110(b)(1) by each of the defendants for failure to list the parties who prepared bankruptcy documents;
- five violations of 11 U.S.C. § 110(c)(1) by each of the defendants for failure to list the identifying numbers of the individuals who prepared the bankruptcy documents;

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<sup>19</sup>11 U.S.C. § 110(i)(1)(B), (C).

<sup>20</sup>2 COLLIER ON BANKRUPTCY ¶ 110.10[1] at 110-16 (15th ed. revised 2004).

<sup>21</sup>*Id.* at 110-17.

<sup>22</sup>11 U.S.C. § 110(j)(2)(B).

<sup>23</sup>*See* Order Amending Caption and Prelim. Inj., filed Oct. 1, 2003 [Docket No. 37].

- five violations of 11 U.S.C. § 110(f)(1) by WTPA for its advertising practices; and
- one violation of 11 U.S.C. § 110(g)(1) by WTPA for collecting bankruptcy court fees from the Thompsons.

These violations reflect a continuing disregard for the provisions of § 110 by WTPA and the national franchise, WTPUSA. A permanent injunction mandating compliance with all provisions of § 110 is therefore appropriate. The plaintiffs' success in obtaining an injunction against the defendants under § 110(j) entitles them to recover reasonable attorney's fees and costs of suit from the defendants.<sup>24</sup>

Finally, as an alternative basis for relief, the plaintiffs have alleged that the defendants engaged in deceptive practices under state law.<sup>25</sup> This claim is again based on the premise that Ms. Brozek advised them to claim state, rather than federal, exemptions on their schedules. As noted earlier, the evidence adduced at trial does not support this premise. The Thompsons' claim for deceptive business practices under state law is without merit. It should be dismissed, with prejudice.

### Conclusion

\_\_\_\_\_ This court has certified the fact of violations of 11 U.S.C. § 110 to the United States District Court for the District of Alaska. WTPA has committed sixteen violations of 11 U.S.C. § 110; WTPUSA has committed ten. A maximum of \$13,000.00 in fines is recoverable, \$8,000.00 from WTPA and \$5,000.00 from WTPUSA, for the benefit of the United States. However, I feel that obtaining the defendants' compliance with the statute is preferable to the collection of fines. In the past, WTPA has indicated a readiness to comply with § 110 by changing its practices. I would defer imposition of any fines against the

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<sup>24</sup>11 U.S.C. § 110(j)(3).

<sup>25</sup>The plaintiffs seek damages for unfair and deceptive acts and practices under A.S. 45.50.471-45.50.561.

defendants for a period of ninety days, to give them an opportunity to fully and completely comply with § 110 and the permanent injunction issued by the court, in all future cases. If compliance is accomplished, fines should be limited to \$10.00 per violation, or \$260.00 total.

Additionally, because violations of § 110 have been certified to the district court, the plaintiffs are entitled to recover statutory damages of \$2,000.00 from each defendant, as well as reasonable attorney's fees and costs.

RESPECTFULLY SUBMITTED this 22nd day of October, 2004.

BY THE COURT

DONALD MacDONALD IV  
United States Bankruptcy Judge