

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

IN RE:	:	
	:	CASE NO. G10-20197-REB
JANICE M. BENNETT,	:	
	:	
Debtor.	:	
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	:	
DONALD F. WALTON,	:	ADVERSARY PROCEEDING
UNITED STATES TRUSTEE,	:	NO. 10-2109
	:	
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 7
LESHON STEWART,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

**ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Before the Court is the motion of Plaintiff Donald Walton, United States Trustee for this region, filed on November 26, 2010 for summary judgment on his complaint against Defendant Leshon Stewart. In the complaint, the U.S. Trustee alleges Ms. Stewart violated certain provisions of 11 U.S.C. § 110 in connection with her efforts assisting Debtor named above in the filing of this Chapter 7 case as a bankruptcy petition preparer as that term is defined in Section 110(a)(1). Based on the actions described therein, the Trustee seeks an award of damages, the imposition of fines, and imposition of an injunction against Defendant under various provisions of Section 110. More specifically, the Trustee seeks a forfeiture of all fees as Defendant charged Debtor pursuant to subsection 110(h)(3)(B), money damages as provided in subsection 110(i)(1), fines for certain

infractions as set out in subsection 110(l)(1), and an injunction against Defendant under subsection 110(j)(2).

The Court held a hearing on this matter on March 16, 2011 at which time it heard testimony from Debtor under examination of Plaintiff and Defendant who is *pro se*. Defendant thereafter filed a written response to the motion on March 28, 2011, in which she denied providing legal advice to Debtor. Defendant further states that she amended certain forms filed herein to disclose her social security number as required by law. Although the record reflects an amendment was filed on February 1, 2010, as discussed below, it does not remedy the deficiencies alleged by the Trustee herein. Based upon a review of the record, the argument and evidence presented, and citation of authority herein, the Court concludes that the motion of the U.S. Trustee for relief against Defendant herein should be granted in part.

Summary judgment may be granted pursuant to Federal Rule of Civil Procedure 56, applicable herein by and through Federal Rule of Bankruptcy Procedure 7056, if “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In deciding a motion for summary judgment, the court “is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 212 (1986). Further, all reasonable doubts should be resolved in favor of the non-moving party, and “if reasonable minds could differ on any inferences arising from undisputed facts, summary judgment should be denied.” *Twiss v. Kury*, 25 F.3d 1551, 1555 (11<sup>th</sup> Cir. 1994), citing *Mercantile Bank & Trust Co. v. Fidelity & Deposit Co.*, 750 F.2d 838, 841 (11<sup>th</sup> Cir. 1985). Presumptions or disputed inferences drawn from a limited factual record cannot support entry of

summary judgment under Fed. R. Civ. P. 56(c), applicable herein through Fed. R. Bankr. P. 7056.

The court cannot weigh the evidence or choose between competing inferences. *See Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11<sup>th</sup> Cir. 1997); *Raney v. Vinson Guard Serv., Inc.*, 120 F.3d 1192, 1196 (11<sup>th</sup> Cir. 1997).<sup>1</sup>

Section 110(a) of the Bankruptcy Code defines a bankruptcy petition preparer as someone “other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing,” that includes “a petition or any other document prepared for filing by a debtor” in federal court in connection with a bankruptcy case. 11 U.S.C. § 110(a)(1) & (a)(2). The Court concludes that the factual record presented establishes that Defendant acted in this role with respect to Debtor in the preparation and filing of certain documents in this case for compensation. Accordingly, the Court concludes Defendant is subject to and must comply with the provisions of Section 110, and that she is liable for her violations of same for which fines or penalties prescribed therein may be imposed consistent with the following discussion.

First, the Trustee has demonstrated an entitlement to relief in the form of Defendant’s forfeiture of the fee paid to her by Debtor under subsection 110(h)(3)(B) in the amount of \$300.00 based on Defendant’s failure to comply with the provisions of subsections 110(c) and (e) as

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<sup>1</sup> Once the party moving for summary judgment has identified those materials in the record demonstrating the absence of a genuine issue of material fact, the non-moving party cannot rest on mere denials or conclusory allegations, but must go beyond the pleadings and designate, through proper evidence, specific facts showing the existence of a genuine issue for trial. *See Fed. R. Civ. P. 56(e)*; *see also Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Johnson v. Fleet Finance, Inc.*, 4 F.3d 946, 948-49 (11<sup>th</sup> Cir. 1993); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11<sup>th</sup> Cir. 1993).

discussed below. *See also* Statement Pursuant to Rule 2016(B). Next, although Defendant apparently did list the last four digits of her social security number on certain documents as filed in this case, the Court concludes that to comply with the identifying information requirements of subsection 110(c)(1), a bankruptcy petition preparer must list the entire number. *See In re Baugh*, 416 B.R. 905, 910 (Bankr. M.D. Ga. 2009). Thus, the Court will assess a fine in the amount of \$150.00 (out of a maximum amount of \$500.00) for each of the six documented infractions producing a total sum of \$900.00.<sup>2</sup> The Court further concludes that Plaintiff has established that Defendant provided legal advice to Debtor with respect to the authority necessary to claim her exemptions under Georgia law, and Defendant is fined \$150.00 for this violation under subsection 110(e)(2)(A).

Regarding Plaintiff's claim for statutory damages for fraud, unfairness, or deception under subsection 110(i)(1), the Court concludes that Plaintiff has not shown the absence of a fact issue here and no relief is awarded on this particular claim.

Finally, regarding Plaintiff's request for an injunction based on this Defendant's continuing conduct in violation of Section 110 in preparing and filing bankruptcy petitions on behalf of individual consumer debtors, the Court concludes Plaintiff has established an entitlement to such

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<sup>2</sup> Specifically, Defendant failed to list her full social security number in violation of subsection 110(c)(1) on the following documents of record: (1) Debtor's Voluntary Petition; (2) Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer (Official Form 19); (3) Certification and Signature of Non-Attorney Bankruptcy Petition Preparer included on Declaration Concerning Debtor's Schedules; (4) Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer as attached to Debtor's Statement of Financial Affairs; (5) Declaration of Non-Attorney Bankruptcy Petition Preparer included on Chapter 7 Statement of Intention; and (6) Certification of [Non-Attorney] Bankruptcy Petition Preparer included on Certificate of Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code (Form 201B). Defendant did provide her name, address, and signature (or /s/ mark) on these documents.

relief to prevent recurrence of same as provided in subsection 110(j)(2)(A)(i)(I). Plaintiff represents that Defendant has failed to either disgorge fees or pay fines to the U.S. Trustee as ordered by another United States Bankruptcy Court as further grounds for such relief, and Defendant has not refuted said allegations.

Accordingly, for the above reasons, it is

**ORDERED** that the motion of Plaintiff Donald F. Walton, United States Trustee for this region, for summary judgment be, and the same hereby is, **granted in part** as set forth herein; and therefore, it is

**FURTHER ORDERED** based on Defendant Leshon Stewart's violations of 11 U.S.C. § 110 as stated herein, that said Defendant return the amount of **\$300.00** to Janice M. Bennett and pay fines in the total sum of **\$1,050.00** to the United States Trustee for this region. It is

**FURTHER ORDERED** that Defendant Leshon Stewart be, and hereby is, **enjoined** from acting as a bankruptcy petition preparer, including the filing or preparation for filing of any such documents on behalf of other persons in the United States Bankruptcy Court for the Northern District of Georgia until sixty (60) days after the payment by Ms. Stewart of all amounts stated herein or further order of the Court. It is

**FURTHER ORDERED** that judgment will be granted contemporaneously herewith in favor of Plaintiff United States Trustee and against Defendant on the complaint as set forth herein.

The Clerk is directed to serve a copy of this Order upon Plaintiff Donald F. Walton, United States Trustee for this region, Defendant Leshon Stewart, Debtor Janice M. Bennett, and the

Chapter 7 Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 21 day of September, 2011.



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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE