



**IT IS ORDERED as set forth below:**

**Date: August 09, 2010**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

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

In re:	:	CASE NUMBER
	:	
<b>ANDREW VASKO,</b>	:	<b>09-79334-MGD</b>
	:	
Debtor.	:	CHAPTER 7
	:	

**ORDER**

This Chapter 7 case is before the Court on Carol Ann Vasko’s Objection to Rule 2004 Examination. (Docket No. 71). Ms. Vasko initiated the present case on behalf of her father Andrew Vasko (“Debtor”) pursuant to a Power of Attorney, which she attached to the petition. Debtor died on January 9, 2010, and a Suggestion of Death was filed on February 25, 2010. (Docket No. 53). No § 341 Meeting of Creditors has been held in this case. The Chapter 7 Trustee, Kyle A. Cooper (“Trustee”) moved for a Rule 2004 Examination of Ms. Vasko as Power of Attorney for Debtor. The Court granted the Trustee’s request on June 18, 2010. (Docket No. 68). Ms. Vasko here objects to the Court’s Order granting the Rule 2004 Exam on the basis that the Power of Attorney, pursuant to

which she filed Debtor's petition, is not valid and that Debtor's case is void *ab initio*. The Court has determined that Ms. Vasko is judicially estopped from claiming that the Power of Attorney is invalid and therefore her Objection is DENIED.

## **I. FINDINGS OF FACTS**

On July 27, 2009, Ms. Vasko filed a skeletal petition on Debtor's behalf. She signed the petition as "Carol Vasko for Andrew Vasko, POA Attached." Ms. Vasko similarly signed Debtor's Exhibit D, declaring that Debtor is not required to receive credit counseling because his was disabled as defined in 11 U.S.C. § 109(h)(4). Significantly, Ms. Vasko also signed the Notice to Consumer Debtor(s) Under §342(b), which educates debtors regarding the crime of making a false oath or statement in connection with a bankruptcy case. On that form, Ms. Vasko signed a Certificate stating that she, on behalf of Debtor, had received and read the notice.

Ms. Vasko signed and filed additional forms on Debtor's behalf. Ms. Vasko signed a Motion for Determination that Debtor is excused from the § 109 credit counseling requirement. (Docket No. 4). Ms. Vasko filed Debtor's Schedules and signed, under penalty of perjury, the Declaration Concerning Debtor's Schedules as "Carol Vasko for Andrew Vasko." (Docket No. 9). Ms. Vasko filed and signed Debtor's Means-Test Calculation. (Docket No. 10). Ms. Vasko signed, under penalty of perjury, Debtor's Statement of Intent. (Docket No. 11). Ms. Vasko also filed and signed Debtor's Statement Regarding Pay Stubs. (Docket No. 12). Ms. Vasko also filed a request, pursuant to the filed Power of Attorney, to appear on Debtor's behalf at the § 341 Meeting of Creditors. (Docket No. 15).

Ms. Vasko directly represented to the Court that she was acting pursuant to a valid Power of

Attorney. On September 30, 2009, Ms. Vasko filed a Motion for Ruling on the Pleadings, in which she expressed concerns regarding whether her “simple durable Power of Attorney” authorized her filing of Debtor’s petition. (Docket No. 16). The Court held a hearing on that Motion on November 5, 2009. Ms. Vasko was present at that hearing and argued that the power to file a bankruptcy petition was within the scope of powers granted by Debtor’s signed durable Power of Attorney. On November 9, 2009, Ms. Vasko filed a Power of Attorney Statement, in which she referred to herself as the “alleged agent/attorney-of-fact of the Power of Attorney.” (Docket No. 26). In that Statement, Ms. Vasko states that she never received an acknowledgment document, which she asserts is required by Pennsylvania law for a power of attorney, but she then proceeds to cite case law that supports her prior statements that she was authorized to file Debtor’s petition pursuant to his signed power of attorney. (*Id.*) Despite the possible concerns Ms. Vasko raised regarding the validity of the power of attorney, she continued filing documents “for Debtor Andrew Vasko.” (Docket Nos. 30–33). The Court relied on Ms. Vasko’s presentation at the hearing, and her various signatures under penalty of perjury, and entered an Order finding that Ms. Vasko had acted in accordance with the powers granted her by Debtor’s signed Power of Attorney and holding that Debtor’s petition was properly filed.

Despite her representations to the Court that she was acting pursuant to a valid power of attorney, and after arguing on behalf of her authority to file Debtor’s petition, Ms. Vasko has attempted to deny the validity of the power of attorney. On January 7, 2010, Ms. Vasko filed a Statement Regarding Validity of Power of Attorney, in which she states that she “has never contended” that Debtor’s power of attorney form is valid, nor that it authorized her filing of his petition. (Docket No. 47).

In the present Objection, Ms. Vasko continues to deny the validity of Debtor's signed power of attorney. (Docket No. 71). After filing Debtor's petition and various other forms on Debtor's behalf, then appearing in hearings to support her authority to file Debtor's petition, Ms. Vasko now seeks to deny the validity of the power of attorney so that she can avoid appearing at a Rule 2004 Examination. In the present Objection, Ms. Vasko declares that she "was never and is not now the Agent/attorney-in-fact for Debtor." Ms. Vasko's current argument is in direct opposition to her prior position.

## **II. CONCLUSIONS OF LAW**

When a party assumes a certain position in a legal proceeding and convinces the Court to accept that position, that party may not thereafter assume a contrary position. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). This is the rule of judicial estoppel. Judicial estoppel is an equitable doctrine that protects the integrity of the judicial process. *Id.* "The doctrine is designed to prevent parties from making a mockery of justice." *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1285 (11th Cir. 2002) (internal citations omitted). Ms. Vasko's present position directly contradicts her prior statements, made under penalty of perjury. Further, the Court relied on Ms. Vasko's prior statements when holding that Debtor's petition was properly filed pursuant to a valid power of attorney. Permitting Ms. Vasko to avoid a Rule 2004 Examination on the basis that Debtor's power of attorney was invalid would therefore make a mockery of justice in this instance. To protect the integrity of the judicial process, Ms. Vasko is estopped from arguing now that she was acting pursuant to an invalid power of attorney when she filed Debtor's petition. Accordingly, it is

**ORDERED** that Carol Ann Vasko's Objection to Rule 2004 Examination is **DENIED**.

The Clerk shall serve a copy of this Order upon counsel for Debtor, Movant, the Chapter 7

Trustee, and the U.S. Trustee.

**END OF DOCUMENT**