

IT IS ORDERED as set forth below:



Date: July 11, 2013

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
IDA LOUISE HOLMES	:	13-10824-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER IMPOSING SANCTIONS

This case came before the Court on an Order to Show Cause directed to John B. Tucker, as attorney for Debtor. The Show Cause order also directed Samuel J. Brantley, an employee of Tucker, to appear before this Court. A hearing was held on June 27, 2013. Present at the hearing were John B. Tucker, attorney for the Debtor; Samuel Brantley, an employee of Tucker; Ida Louise Holmes, the Debtor; Jonathan

Adams, representing the Chapter 13 Trustee; and Jeneane Treace, representing the United States Trustee. The Court took evidence, consisting of live testimony and the introduction of exhibits, and heard the arguments of counsel. Based on the evidence adduced at the hearing, the Court has serious concerns about the actions of John Tucker in the Debtor's case.

A.

On August 4, 2012, the Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code, Case No. 12-12229-WHD. The Debtor was officially represented by John Tucker. The 341 Meeting of Creditors took place on September 10, 2012, and the Confirmation Hearing was scheduled for December 6, 2012. The Confirmation Hearing was subsequently rescheduled to January 24, 2013, at which time the Debtor filed a voluntary motion to dismiss the Chapter 13 proceeding, Case No. 12-12229-WHD. The Confirmation Hearing set for January 24, 2013 was rescheduled to February 28, 2013. An order granting the dismissal of Case No. 12-12229-WHD was entered on January 25, 2013 causing the Confirmation Hearing to become moot.

On April 1, 2013, the Debtor again filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code, Case No. 13-10824-WHD. She was once more represented by John Tucker. The 341 Meeting of Creditors took place on April 29,

2013, and the Confirmation hearing was scheduled for May 30, 2013. At the Confirmation Hearing, the Chapter 13 Trustee informed the Court that, upon information and belief, the Debtor entered into a contract, without court approval or disclosure, to sell certain real property, commonly known as 63 Twiggs Corner, Peachtree City, Georgia (hereinafter the "Twiggs Property"), on or about November 3, 2012, while still a debtor in Case No. 12-12229-WHD. The Chapter 13 Trustee alleged that the Debtor failed to disclose the sales contract to the Court or the Chapter 13 Trustee during the pendency of Case No. 12-12229-WHD. Moreover, after the Debtor filed her Motion to Voluntarily Dismiss Case No. 12-12229-WHD on January 24, 2013, and the Case was dismissed on January 25, 2013, the Twiggs Property was sold six days later, on January 31, 2013, to Edwin Alberto for \$38,000.00.

At the May 30th Confirmation Hearing, the Chapter 13 Trustee informed the Court that the Debtor, at her 341 Meeting of Creditors, testified that (1) she discussed the sale of the Twiggs Property with her attorney, John Tucker, during Case No. 12-12229; and (2) Tucker advised her to enter into the sales contract and to voluntarily dismiss Case No. 12-12229-WHD, without disclosing the transaction to the Court. Tucker appeared at the Confirmation Hearing to represent the Debtor as her attorney and refuted the allegations of the Chapter 13 Trustee, specifically

denying that he (1) advised the Debtor to enter into the sale of the Twiggs Property or (2) advised the Debtor not to disclose the transaction to the Court. Tucker further disputed that improper actions were taken by employees in his office. Given the disparity of the testimony and allegations set forth by the parties, the Court entered a Show Cause Order directing John Tucker and Samuel Brantley to appear before the Court and show cause why sanctions should not be imposed for advising the Debtor to unfairly manipulate the Bankruptcy Code.

B.

On June 27, 2013, at the Show Cause Hearing, the Court took the matter under advisement to determine three ultimate issues before the Court: (1) whether Tucker participated in the aiding and abetting of the unauthorized practice of law; (2) whether he fulfilled the duties owed to his client and adequately represented her in her bankruptcy proceedings; and (3) whether, either through his own advice, counsel, and/or representations or through that of individuals under his supervision, he advised his client to manipulate the Bankruptcy Code.

Aiding and Abetting the Unauthorized Practice of Law:

The Court heard testimony from the Debtor, John Tucker, and Samuel Brantley. After evaluating the testimony from all parties, the Court has determined that Tucker, either through willful or negligent supervision of Samuel Brantley,

aided and abetted the unauthorized practice of law. Brantley testified that he voluntarily surrendered his license to practice law in connection with an investigation dating back to 2004, and is now employed by Tucker as a paralegal. Tr. Test. of Samuel Brantley, 3:00:02, June 27, 2013. Tucker stated that it is his "understanding" that an attorney who has surrendered his license to practice law may assist another by performing paralegal work. Tr. Test. of John Tucker, 2:45:55, June 27, 2013.

The Debtor testified that the only contact she had with Tucker's office, until the 341 Meeting of Creditors, was with Brantley. Tr. Test. of Ida Holmes, 2:13:01, June 27, 2013. She further testified that she met with Brantley for the initial consultation as well as a subsequent meeting, at which Brantley prepared her bankruptcy schedules and petition for Case No. 12-12229-WHD. Tr. Test. of Ida Holmes, 2:09:00, June 27, 2013; see also Tr. Test. of Samuel Brantley, 3:06:30, June 27, 2013. She further stated that the first time she even spoke with Tucker was at the first 341 Meeting of Creditors held on September 10, 2012, and that through the pendency of both cases, she spoke to Tucker on only three occasions—at the two 341 Meetings and at the first Confirmation Hearing. Tr. Test. of Ida Holmes, 2:21:40-2:22:25, June 27, 2013; see also Tr. Test. of John Tucker, 2:32:34, June 27, 2013. At the Show Cause Hearing, the Debtor testified that at no time was she

advised that Brantley had surrendered his license and answered in the affirmative that she "believed Brantley to be an attorney." Tr. Test. of Ida Holmes, 2:31:08-2:31:24, June 27, 2013. Brantley testified he advised the Debtor that the only sure way to prevent a foreclosure action was to file bankruptcy, and discussed with her under which chapter of the Bankruptcy Code she should file. Tr. Test. of Samuel Brantley, 3:26:00-3:26:35, 3:26:36-3:27:08, June 27, 2013. In addition, he prepared the necessary paper work. Id. Moreover, during the pendency of the case, Brantley explained to the Debtor her "options"¹ with respect to the Twiggs Property, acted as contact with the realtor, and represented her interests in listing the house for sale. Tr. Test. of John Tucker, 3:28:10-3:28:12, 3:40:00-3:40:07, June 27, 2013.

It appears clear to the Court that Brantley acted as the sole contact with the Debtor and that he took upon himself many, if not all, of the duties and responsibilities of Holmes' attorney. In fact, it appears that Tucker's role in this case was to be nothing more than a figure head behind which Brantley could operate as an attorney.

¹ Although the testimony was somewhat disjointed, it appears that the two options for dealing with the Twiggs Property were (1) file a motion to sell with the Court, and (2) file a voluntary motion to dismiss with the understanding that if future bankruptcy protection was sought, the Debtor would have to account for the proceeds and prove the sale was made at fair market value. See Tr. Test. of Ida Holmes, 3:23:30, June 27, 2013; Tr. Test. of John Tucker, 2:40:00.

The Court, after considering the evidence adduced, believes that Brantley engaged in the unlawful practice of law by virtue of his one-on-one consultations with the Debtor and by providing legal counsel to her before and during her bankruptcy cases. Additionally, the Court is of the opinion that Tucker did not properly supervise Brantley, as a paralegal, and has received no justification from Tucker for his failure to restrain Brantley from exercising the duties and responsibilities that are the sole purview of an attorney. For these reasons, the Court finds that Tucker permitted Brantley to engage in the unlicensed practice of law.

Adequate Legal Representation provided by John Tucker.

The testimony presented at the hearing indicates that, in gross deviation from standard bankruptcy practice, the first time Tucker met the Debtor was at the 341 Meeting of Creditors in the Debtor's first case, Case No. 12-12229. Tr. Test. of Ida Holmes, 2:13:01-2:13:12; Tr. Test. of John Tucker, 2:32:30-2:32:34, June 27, 2013. According to Tucker's own testimony he never met with her prior to the filing of the bankruptcy schedules or petition in Case No. 12-12229. Tr. Test. of John Tucker, 2:32:43, June 27, 2013. The record also indicates Tucker overly relied upon Brantley's assurances and, consequently, did not thoroughly review Holmes' bankruptcy petitions, schedules, and documents in either case prior to Brantley's filing them with the Court. Furthermore, it appears that Tucker abandoned his client

to the attentions of a formerly disbarred attorney acting under the guise of a paralegal. The Court finds this performance to be unacceptable and grossly deficient of the standards expected of attorneys in this Court or in the practice of bankruptcy law, in general. Therefore, the Court finds that Tucker failed to provide competent legal counsel to his client in this case.

Manipulation of the Bankruptcy Code.

The question of whether the Debtor or Debtor's counsel manipulated the Bankruptcy Code in this case revolves around the handling of the Twiggs Property in Case No. 12-12229. The Debtor scheduled the Twiggs Property's value at approximately \$22,000, while acknowledging that the Fayette County Tax Assessor valued the Property at approximately \$80,000. See Debtor's Schedule A., Case No. 12-12229, Doc. No. 1. The Chapter 13 Trustee filed several objections to Debtor's Confirmation of the Chapter 13 Plan, with one of the primary issues being the valuation assigned to the Twiggs Property. See Trustee's Objection to Confirmation, Case No. 12-12229, Doc. No. 16. At the first 341 Meeting of Creditors, the Debtor's counsel represented to the Chapter 13 Trustee that the value was much lower than the figure arrived at by the Tax Assessor and that he would be presenting evidence supporting that position. Tr. Test. of John Tucker, 2:33:30-2:34:15, June 27, 2013.

After the first Meeting of Creditors in the first case, Debtor's counsel² initiated a valuation process to attempt to prove that the valuation of the house was lower than the value assigned by the Tax Assessor. Tr. Test. of John Tucker, 2:34:16-2:34:50, June 27, 2013. The option chosen for valuing the Twiggs Property was to place it on the open market and have a realtor conduct a Broker Price Opinion (BPO). Id. While the property was listed, an offer was made, and on November 3, 2012, the Debtor contracted to sell the Twiggs Property, with the stipulation that the bankruptcy court must authorize the sale. See Trustee's Ex. 1.

Prior to the first Confirmation Hearing in Case No. 12-12229, Brantley met with the Debtor to discuss the difference in value arrived at by the Tax Assessor and the scheduled value of the Twiggs Property, along with the inherent problems it might create for the ultimate confirmation of her Chapter 13 case. Brantley further advised the Debtor that she had "two options:" either (1) sell the Twiggs Property with court approval, or (2) voluntarily dismiss the present case with the intention of filing a new bankruptcy case after the sale of the Twiggs Property. Tr. Test. of Samuel Brantley, 3:21:00-3:21:37, June 27, 2013. The Debtor voluntarily dismissed

² Brantley initiated and directed the entire valuation process with the real estate agent and the Debtor, with little or no supervision by Tucker. Tr. Test. of John Tucker, 2:34:16-2:34:50.

her case on January 25, 2013,³ and the sale of the Property took place on January 31, 2013. See Trustee's Ex. 2. Debtor's counsel never filed with this Court a Motion to Sell the Twiggs Property. For explanation, Tucker stated that the first case was dismissed because there was great pressure to sell the Twiggs Property quickly, as the buyer had stated that he would walk away from the sale if it did not occur "by the end of January, [2013]." Tr. Test. of John Tucker, 2:42:20-2:42, June 27, 2013. Tucker also said that it was his understanding that "we didn't have to go out immediately and file" the Motion to Sell the Twiggs Property. Tr. Test. of John Tucker, 2:50:00-2:50:20, June 27, 2013. However, Tucker failed to adequately explain why there was insufficient time to file the proper motion, as he knew of the sales agreement in early December, had the necessary information by early January, and did not need to close until the end of January. See Tr. Test. of John Tucker, 2:43:03-2:43:25, 2:49:30-2:50:45, June 27, 2013. Moreover, he also stated that it was his "decision" to file the voluntary dismissal a couple of weeks later in order "to buy her as much time as possible." Tr. Test. of John Tucker, 2:50:49, June 27, 2013.

The Debtor filed the present Chapter 13 case on April 1, 2013, Case No. 13-10824. In the Statement of Financial Affairs, the Debtor indicated that she received

³ The Court believes that Holmes was susceptible to the influence of her attorney and would follow whatever recommendations he made.

a net income of approximately \$2,900 from the sale of the property. At the second 341 Meeting of Creditors, the Debtor testified that she sold the property at the direction of her counsel. See Trustee's Ex. 3. Although Tucker denies this, the Court concludes and evidence supports that Debtor's counsel⁴ induced the Debtor to dismiss her case so that she could sell a contested asset without disclosure and without seeking consent of the Court. Such actions are in direct conflict with the spirit of the Bankruptcy Code and either reveal a conscious attempt to manipulate the Bankruptcy Code, or they exemplify a serious inadequacy of competence.

C.

The Court is always reluctant to impose sanctions on an attorney, as the Court recognizes the burden that such sanctions would place on the individual. However, in certain circumstances, the actions of the attorney may warrant the imposition of sanctions, and it is the Court's responsibility to monitor the actions of those who practice before it in order to ensure that the attorney fulfills his obligations and responsibilities in the representation of his client, as well as fulfills the ethical obligations inherent in the practice of law.

⁴ Debtor's counsel is not only responsible for the advice given by himself, personally, but is also responsible for any advice given to clients by those who work under his supervision.

In the judgment of the Court, the record in this case warrants the imposition of sanctions.

Therefore, it is hereby **ORDERED** that **JOHN B. TUCKER** is barred from filing any bankruptcy case in the Northern District of Georgia for a period of **SIX MONTHS** from the date of this ORDER;

It is **FURTHER ORDERED** that **JOHN B. TUCKER** is prohibited from filing any bankruptcy case in this district until he completes **twelve (12) hours** of continuing legal education consisting of the following: **six (6) hours** of continuing legal education dealing with practice and procedure under Chapter 13 of the Bankruptcy Code, as well as, **six (6) hours** of continuing legal education in Professional Responsibility. To verify his completion of these required hours of continuing legal education, Tucker shall file a certificate signed by him under oath and under penalty of perjury, together with a copy of a certificate of completion issued by the organization(s) providing the required continuing legal education;

It is **FURTHER ORDERED** that **JOHN B. TUCKER** shall disgorge all fees received in Bankruptcy Case No. 12-12229 and Bankruptcy Case No. 13-10824 and shall represent the Debtor on a *pro bono* basis for the remainder of Bankruptcy Case No. 13-10824, if she chooses to continue utilizing his services.

The Clerk is **DIRECTED** to serve a copy of this ORDER on the Debtor, John

B. Tucker, Samuel Brantley, the Chapter 13 Trustee and the United States Trustee.

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