



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

**Date: January 22, 2016**

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

---

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
MONICA A. HERNDON,	:	15-10475-WHD
_____	:	
	:	
GUY G. GEBHARDT,	:	ADVERSARY PROCEEDING
ACTING UNITED STATES	:	NO. 15-1047-WHD
TRUSTEE,	:	
	:	
Plaintiff.	:	
	:	
v.	:	
	:	
PATRICE N. EVERSON,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion for Default Judgment filed by

Guy G. Gebhardt, Acting United States Trustee for Region 21 (hereinafter, the “U.S. Trustee”), in the above-captioned adversary proceeding. The U.S. Trustee seeks judgment by default against Patrice N. Everson (hereinafter, the “Defendant”). This matter arises in connection with a complaint requesting that the Court enjoin the Defendant from acting as a bankruptcy petition preparer pursuant to 11 U.S.C. § 110(j)(2)(B). This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. See 28 U.S.C. §§ 157(a) & (b)(2)(A), 1334.

The U.S. Trustee filed his complaint on September 15, 2015. The Defendant filed no responsive pleading. On December 31, 2015, after the Clerk’s entry of default, the U.S. Trustee filed the instant motion for default judgment.

In order to grant default judgment, the Court must first

determine that the U.S. Trustee's allegations of fact serve as a sufficient basis for entry of default judgment. See *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). In evaluating those allegations, the Court notes that "a defaulted defendant is deemed to have admitted the movant's well-pleaded allegations of fact, [but] she is not charged with having admitted 'facts that are not well-pleaded...or conclusions of law.'" *Perez v. Wells Fargo, N.A.*, 774 F.3d 1329, 1339 (11th Cir. 2014) (second alteration in original) (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)).

### **Background**

The U.S. Trustee's complaint alleges that the Defendant prepared one or more documents on behalf of Monica A. Herndon (hereinafter, the "Debtor") in bankruptcy case 15-10475-WHD for

a fee of \$325. On April 7, 2015, as part of that bankruptcy case, the U.S. Trustee filed a Motion for Imposition of Fines and Sanctions and Disallowance or Reduction of Fee against the Defendant. The U.S. Trustee alleged that the Defendant's fee was excessive and that the Defendant had "collected or received payment from the debtor or on behalf of the debtor for the court fees in connection with filing the Bankruptcy Case," which violates 11 U.S.C. § 110(g).<sup>1</sup>

On April 9, 2015, the Court issued an Order and Notice setting the deadline for filing objections to the U.S. Trustee's motion. No objection was filed or hearing requested. As a result, the Court entered an order granting the U.S. Trustee's motion on

---

<sup>1</sup> "A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition." 11 U.S.C. § 110(g).

June 5, 2015. The Court assessed a \$500 fine against the Defendant for violating § 110(g), ordering the Defendant to pay that fine to the U.S. Trustee by August 31, 2015. The Court also disallowed the Defendant's \$325 fee and ordered her to disgorge the entire \$325 to the Debtor by July 31, 2015. The Defendant was to certify the completion of these payments by filing reports with the Court indicating the date, amount, manner of delivery, and method of payment for each.

The Defendant has not filed any reports with the Court, and the U.S. Trustee's complaint states that he has not been informed that any payments have been made. Because the Defendant has failed to make these payments, the U.S. Trustee requests that the Court enter an order enjoining the Defendant from acting as a bankruptcy petition preparer.

## Discussion

A “bankruptcy petition preparer” is “a person, 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” in a bankruptcy case. 11 U.S.C. § 110(a). Section 110(j)(2)(B) empowers a court to enjoin an individual from acting as a petition preparer as a consequence of failing to pay a penalty imposed under § 110 or failing to disgorge fees as ordered by the court. 11 U.S.C. § 110(j)(2)(B).

Here, the Defendant is a bankruptcy petition preparer because she prepared one or more documents for filing with the Court and received compensation of \$350. Thus, the Defendant is subject to the provisions of § 110. The Court’s June 5th Order explicitly directed the Defendant to pay \$500 as punishment for

her violation of § 110(g) and ordered her to refund her fee to the Debtor. The allegations in the complaint establish that the Defendant has disregarded the Court's order by failing to pay the fine and disgorge her fee. Therefore, an injunction pursuant to § 110(j)(2)(B) is warranted.

### **Conclusion**

Having considered the allegations in the U.S. Trustee's complaint, it is hereby **ORDERED** that the U.S. Trustee's Motion for Default Judgment is **GRANTED**, and the Defendant is enjoined from acting as a bankruptcy petition preparer. Judgment will be entered for the U.S. Trustee in accordance with this Order.

The Clerk is **DIRECTED** to serve a copy of this Order on the U.S. Trustee, the Defendant, and respective counsel, if any.

**END OF DOCUMENT**