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at ___ O'clock & ___ min. ___ M

DEC 15 2006

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (26)

IN RE:

C/A No. 05-08679-JW

Ian Mitchell Farnsworth,

Chapter 13

Debtor.

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in the attached Order of the Court, David H. Hanna, Sr. ("Hanna") shall disgorge all attorney's fees received in this case to Debtor within seven (7) days from the entry of the Order, including the retainer paid by Debtor, which the Court finds to be in the amount of \$1,106.00. Hanna shall not be entitled to any further distribution of attorney's fees that may be owed to him from Debtor or Trustee in this case. Hanna shall provide Debtor with the name and the telephone number of his malpractice insurer within seven (7) days of the entry of the Order. Hanna is suspended effective December 14, 2006 from filing further bankruptcy cases within this District pending further order of the Court. Hanna shall serve a copy of the Order on all individuals he represents in cases currently pending before this Court and shall sever a copy of the Order on all individuals who have paid a retainer to Hanna to file a case within this Court but whose case has not yet been filed and on any other individual with whom Hanna has an attorney-client relationship with the expectation that Hanna will represent them before this Court. Hanna is relieved of counsel in Debtor's bankruptcy case.¹

ENTERED

DEC 15 2006


UNITED STATES BANKRUPTCY JUDGE

L. G. R.

Columbia, South Carolina
December 15, 2006

¹ The Court retains jurisdiction to consider sanctions against Hanna notwithstanding any dismissal of this case or his relief as counsel. See In re Neiman, 257 B.R. 105 (Bankr. S.D. Fla. 2001); In re Kitchin, 327 B.R. 337 (Bankr. N.D. Ill. 2005); In re Quaker Distributors, Inc., 189 B.R. 63 (Bankr. E.D. Pa. 1995).

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IN RE:

Ian Mitchell Farnsworth,

Debtor.

C/A No. 05-08679-JW

Chapter 13

ORDER

ENTERED

DEC 15 2006

L. G. R.

This matter comes before the Court upon a Rule to Show Cause ("Rule") issued by the Court on November 9, 2006. The Rule required David H. Hanna, Sr. ("Hanna") to appear on December 14, 2006 and show cause why sanctions, including disgorgement of fees and suspension from practice before this Court, should not be imposed for his conduct in this case. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Based upon the record of this case and applicable law, the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. Hanna filed a petition on behalf of Debtor on August 1, 2005.
2. Hanna incorrectly listed Debtor's social security number in documents filed with the Court and on August 22, 2005 he filed an amended petition and Bankruptcy Form 21 SSN to reflect Debtor's correct social security number.
3. At the meeting of creditors on September 23, 2005, it was evident to the chapter 13 trustee² ("Trustee") that Debtor omitted property from his schedules and failed to include the a creditor of Debtor on his schedules E and F. Pursuant to national and local rules, Trustee

¹ To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

² The current trustee in this case is Gretchen D. Holland who was substituted for the Hon. Helen E. Burris on February 1, 2006 after Judge Burris' election to the bench of this Court.

requested Debtor provide certain information to her office and amend his schedules to accurately reflect his assets and liabilities.

4. Debtor failed to amend his schedules or provide the information requested by Trustee at the time of the confirmation hearing on November 3, 2005. Therefore, Trustee sought and obtained an order requiring Debtor to file an amended plan within ten (10) days of November 3, 2005.

5. On December 19, 2005 and December 20, 2005, Debtor contacted Trustee and requested an extension of time to submit the required documents. Debtor indicated in his communication with Trustee that he needed help from Hanna but was unable to reach him after several telephone calls and a visit to Hanna's office.

6. On January 3, 2006, Trustee filed the first petition to dismiss this case based upon Debtor's failure to provide documents and submit an amended plan pursuant to the order on November 3, 2005.

7. Hanna resolved the first petition to dismiss by an agreement with Trustee that he provide the requested information and the amended plan within fifteen days. This agreement was memorialized by order entered January 27, 2006.

8. On March 2, 2006, Hanna partially complied with his agreement with Trustee and provided her with a packet of information she requested in 2005. Hanna's communication with Trustee indicated "our client has complied, it is our office that failed to get the information to you."

9. Trustee filed a second petition to dismiss on March 27, 2006 because Debtor had not filed a confirmable plan. This petition was again resolved by consent order between Trustee and Hanna providing that Hanna would file an amended plan within ten days of April 27, 2006.

Hanna again failed to timely comply with this consent order and did not submit an amended plan until May 19, 2006.

10. With regard to the amended schedules requested by Trustee in 2005, Hanna did not file these documents until April 26, 2006.³ After providing notice to Hanna that the Court would strike amended schedules B and C because they did not purport to be signed by Debtor, an order striking these schedules was entered May 10, 2006. Hanna has failed to file amended schedules B, E, and F as requested by Trustee in 2005.

11. Trustee also made multiple requests to Hanna to submit quarterly business reports for Debtor pursuant to 11 U.S.C. § 1304(c). These documents were not submitted.

12. On October 24, 2006, Trustee filed a third petition to dismiss ("Petition") Debtor's chapter 13 case on grounds that Debtor has failed to file quarterly business reports pursuant to 11 U.S.C. § 1304(c).

13. Hanna failed to respond to the Petition. The Petition was scheduled for a hearing before the undersigned on November 9, 2006. Debtor appeared at the hearing and opposed the petition on grounds that Hanna did not advise Debtor of the requirements of 11 U.S.C. § 1304(c). Debtor also indicated that Hanna failed to adequately communicate with Debtor by failing to return Debtor's phone calls over a two month period. Hanna did not appear at the hearing on the Petition and did not seek to continue the hearing in accordance with this Court's guidelines.⁴ Trustee also raised concerns that Hanna filed an amended plan in this case without Debtor's knowledge.

³ Trustee indicates that these stricken schedules were also deficient because they did not accurately reflect the assets listed by Debtor in his tax returns.

⁴ As indicated in Trustee's return to the Rule, Hanna was issued a doctor's excuse that cleared Hanna to return to work after November 8, 2006. Hanna did not present this or other medical excuse to the Court at the time of the hearing on the Petition.

14. On November 9, 2006, the Court issued the Rule and ordered Hanna to produce, on or before November 17, 2006, to the Bankruptcy Clerk of Court the original copy of the petition, all schedules, amended schedules, the plan, and all amended plans bearing Debtor's original signature.

15. Hanna failed to produce the documents set forth in the Rule before the deadline and did not produce those documents at the hearing on the Rule.

16. Trustee filed a detailed return to the Rule indicating her multiple efforts to communicate with Hanna. Trustee requested that the Court suspend Hanna from practice for a period of two (2) years. At the hearing on the Rule, Trustee also requested that the Court relieve Hanna as counsel from other cases within this District.

17. Debtor appeared at the Rule and stated that he was not consulted about the amendment to his plan, which increased his obligation in this bankruptcy from \$790.00 per month to \$1,818.00 per month. Debtor also stated that Hanna did not return his telephone calls and did not advise him on the filing of quarterly business reports.

CONCLUSIONS OF LAW

Pursuant to SC LBR 9010-1(d), Hanna owes a duty to represent Debtor. This duty encompasses the duty to provide competent and diligent representation to Debtor. See In re Henderson, C/A No. No. 05-14925-W, slip op. (Bankr. D.S.C. Sept. 5, 2006); In re Grimsley, C/A No. 04-02072-W (Bankr. D.S.C. May 26, 2006). Hanna violated this duty by failing to appear at the hearing on the Petition, by failing to timely submit documents required by Trustee, by failing to adequately communicate and respond to Debtor's communications, and by failing to

timely file amended plans and schedules for Debtor.⁵ See In re Feagins, C/A No. 05-08208-W, slip op. (Bankr. D.S.C. Jan. 18, 2006).

Operating Order 06-02, and its predecessor Operating Order 04-11, requires attorneys to obtain the debtor's original signature on plans, petitions, schedules, and other documents requiring a debtor's signature. Attorneys are required to retain these documents and make them available for inspection at the request of the Court. By presenting the schedules, petition, and plans to this Court, Hanna is certifying to the Court under Fed. R. Bankr. P. 9011(b) that these documents were properly executed. See In re Ulmer, C/A No. 05-45096, slip op. (Bankr. D.S.C. Dec. 5, 2006) (sanctioning a creditor's attorney and law firm for presenting improperly executed affidavits to the Court); In re Rivera, 342 B.R. 435 (Bankr. D.N.J. 2006). Although Hanna asserts that he has the original documents in this case, he was unable to produce them at the hearing on the Rule.⁶ His credibility is further called into doubt considering his failure to comply with Operating Order 04-11 in other instances and his submission of unsigned schedules in this case. See In re Ashworth, C/A No. 04-11925, slip op. (Bankr. D.S.C. July 8, 2005) (sanctioning Hanna and disgorging Hanna's attorney's fees for failing to obtain debtor's signature on the schedules and in six amended plans). Given the credible testimony of Debtor, Hanna's failure to comply with the Rule, and the lack of evidence that the petition, schedules, or plans in this case were properly executed, the Court finds Hanna violated Fed. R. Bankr. P. 9011(b). Hanna is also in contempt by failing to comply with the Rule.

Evident from the hearing on the Rule is that Hanna's conduct has injured the Debtor and that his practice falls below standards required by this Court. Debtor in this case is operating

⁵ There is not sufficient evidence in the record that any of the delays in submitting documents or information is attributable to the neglect of Debtor in providing Hanna with the information required.

⁶ Hanna indicated at the hearing on the Rule that he had copies in his file of the unsigned documents.

under the terms of a plan of which he testified that he was not informed nor agreed to and he has an attorney who has failed to represent him by failing to appear at a hearing, timely submit required documents, adequately communicate with him, and competently advise him on the requirements of bankruptcy. Debtor requested at the hearing that Hanna be relieved as his counsel so that he may obtain other counsel.

Were it not for the long history of problems with Hanna's practice before this Court, the Court may consider less severe sanctions. See e.g., In re Ashworth, C/A No. 04-11925 (sanctioning Hanna and disgorging Hanna's attorney's fees for failing to obtain debtor's signature on the schedules and in six amended plans in violation of Operating Order 04-11); In re Justice, C/A No. 03-08085 (waiving all fees in the case because Hanna failed to disclose previous filings of debtor); In re Culbreth, C/A No. 03-08993 (same); In re Krawczyk, C/A No. 05-08793 (suspending Hanna for a period of 90 days in light of his deficient representation of debtor); In re Cox, C/A No. 06-1937 (violating local rules in filing a motion to extend the automatic stay, the Court adopted the sanction agreed to by Hanna in Krawczyk but cautioned Hanna that further deficiencies in his practice would result in more severe sanctions); In re Parsons, C/A No. 06-00260 (filing a motion to extend the automatic stay not in compliance with SC LBR 4001-1(b)(2)); In re Rhodes, C/A No. 06-00425 (same); In re Heltor, C/A No. 06-00426 (same); In re Brannon, C/A No. 06-00627 (same and Hanna failed to renew the motion for debtor); In re Brannon, C/A No. 06-00040 (disgorging Hanna's fees for Hanna filing a petition for debtor without debtor being eligible for relief under § 109(h)); Republic Finance v. Welborn, Adv. Pro No. 06-80039 (dismissing adversary filed by Hanna because he did not have the authority to file the proceeding for the client who engaged another firm to file the proceeding). In the most recent cases filed by Hanna, it appears that Hanna has filed a disclosure of

compensation indicating that his clients have paid the filing fees to him to file their cases but Hanna has not remitted the same to the Court, thus subjecting these cases to dismissal. See In re Martin, C/A No. 06-5536-HB (Hanna is the subject to a Rule to Show Cause in this case because he did not pay the filing fee by the deadline set forth in a deficiency notice and the filings indicate that debtor paid the fee to Hanna); In re Gilliland, C/A No. 06-5749-HB, In re Chastain, 06-5765-HB; In re Hardy, 06-5768-HB. The failure to timely remit the filing fees entrusted to Hanna by his clients raise further issues regarding the performance of fiduciary duties owed to his clients. Hanna has been provided with multiple opportunities to reform his practice but has chosen to continue to conduct his practice in a manner that falls below the acceptable standard of care.

Based upon the record of the hearing and the findings herein, the Court finds that sanctions are warranted and should be imposed immediately to avoid further harm to individuals within this District. Without prejudice to the right of the Court to enter additional sanctions in this and other cases, it is;

ORDERED, pursuant to 11 U.S.C. § 329, Hanna shall disgorge all attorney's fees received in this case to Debtor within seven (7) days from the entry of this Order, including the retainer paid by Debtor, which the Court finds to be in the amount of \$1,106.00. Hanna shall not be entitled to any further distribution of attorney's fees that may be owed to him from Debtor or Trustee in this case. Hanna shall file a certification of compliance with this requirement of the Order within ten (10) days of its entry.

ORDERED, pursuant to 11 U.S.C. §§ 105 and 329, Fed. R. Bankr. P. 9011, and Hanna's consent on the record, Hanna shall provide Debtor with the name and the telephone number of

his malpractice insurer within seven (7) days of the entry of this Order. Hanna shall file a certification of compliance with this requirement of the Order within ten (10) days of its entry.

ORDERED, pursuant to 11 U.S.C. § 105, Fed. R. Bankr. P. 9011, and Local Civil Rule 83.IX.02 DSC, Hanna is indefinitely suspended effective December 14, 2006 from filing further bankruptcy cases within this District pending further order of the Court.

ORDERED, pursuant to 11 U.S.C. § 105 and this Court's inherent authority to regulate litigants that appear before it, Hanna shall serve a copy of this Order on all individuals he represents in cases currently pending before this Court and shall serve a copy of this Order on all individuals who have paid a retainer to Hanna to file a case within this Court but whose case has not yet been filed and on any other individual with whom Hanna has an attorney-client relationship with the expectation that Hanna will represent them before this Court. Hanna shall serve all of these clients by certified mail, return receipt requested, at their last known address. Hanna shall retain all evidence of service. Hanna shall file a certification of compliance with this requirement of the Order within ten (10) days of its entry.

ORDERED, effective December 14, 2006, Hanna is relieved of counsel in Debtor's bankruptcy case.⁷

ORDERED, The Clerk of Court shall serve a copy of this Order upon all trustees within this District, Hanna, Debtor, the United States Trustee, and the South Carolina Office of Disciplinary Counsel.

The Court takes under advisement the remaining issues of the Rule including the term of Hanna's suspension, the conditions for reinstatement to practice, and Trustee's request to compel

⁷ The Court retains jurisdiction to consider sanctions against Hanna notwithstanding any dismissal of this case or his relief as counsel. See In re Neiman, 257 B.R. 105 (Bankr. S.D. Fla. 2001); In re Kitchin, 327 B.R. 337 (Bankr. N.D. Ill. 2005); In re Quaker Distributors, Inc., 189 B.R. 63 (Bankr. E.D. Pa. 1995).

Hanna to be relieved as counsel in all pending cases before this Court. The sanctions imposed herein survive any dismissal of this case.

AND IT IS SO ORDERED.

Columbia, South Carolina
December 15, 2006


UNITED STATES BANKRUPTCY JUDGE