UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, George Robert Walker and Sherry Denise Walker, Debtor(s).	C/A No. 18-04406-HB Adv. Pro. No. 18-80075-HB
George Robert Walker, Sherry Denise Walker, Plaintiff(s), v. UpRight Law, Law Solutions Chicago, LLC, Law Solutions Chicago LLC, Defendant(s).	Chapter 13 **ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

THIS MATTER is before the Court for consideration of the Motion for Summary Judgment filed by Defendant UpRight Law, Law Solutions Chicago, LLC, Law Solutions Chicago LLC (collectively, "Upright").[1] The Court reviewed exhibits submitted by the parties as follows: Plaintiffs' deposition testimony; the Declaration of Ryan M. Galloway, Associate General Counsel and Vice President of Upright; the retainer agreement between Upright and Plaintiffs; the partnership agreement between Upright and a South Carolina licensed attorney; email communications between Upright and Plaintiffs as well as internal communications within Upright; the accounting of work performed that Upright provided Plaintiffs; and certain online advertisements posted by Upright.

[1] ECF No. 36, filed May 29, 2019. Plaintiffs filed an Objection to the Motion. (ECF No. 38, filed Jun. 12, 2019).

All claims have been resolved except a request for sanctions pursuant to 11 U.S.C. § 105.[2] Upright's Motion asserts the undisputed facts demonstrate there are no grounds for relief under § 105 and the cause of action is legally deficient. Application of summary judgment standards here is challenging, but after reviewing the facts and applicable law, the Court finds that the Motion must be denied.[3]

Fed. R. Civ. P. 56(a)[4] provides "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The burden of demonstrating the absence of a genuine issue of material fact rests on the party seeking summary judgment. "[S]ummary judgment should be granted in those cases in which it is perfectly clear that no genuine issue of material fact remains unresolved and inquiry into the facts is unnecessary to clarify the application of the law." *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 738 (D.S.C. 2001). On summary judgment, the court must "view the facts and the reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *United Rentals, Inc. v. Angell*, 592 F.3d 525, 530 (4th Cir. 2010).

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654. The Court's power to "manage its own affairs so as to achieve the orderly and expeditious disposition of cases," includes "the power to control admission to its bar and to discipline attorneys who appear before it." *Chambers v.*

[2] *See* Order of Dismissal of the cause of action for unauthorized practice of law. (ECF No. 14, entered Dec. 20, 2018); Stipulation of Dismissal (ECF No. 32, entered Apr. 24, 2019).
[3] Request for relief under § 105 is often presented by a motion or raised *sua sponte* rather than with the formality of an adversary proceeding.
[4] Made applicable to this adversary proceeding by Fed. R. Bankr. P. 7056.

NASCO, Inc., 501 U.S. 32, 43, 111 S. Ct. 2123, 2132, 115 L. Ed. 2d 27 (1991) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)). "The federal courts may and should hold attorneys appearing before them to recognized standards of conduct in their jurisdictions: 'The sanctioning court must, however, hold attorneys accountable to recognized standards of professional conduct.'" *In re Computer Dynamics, Inc.*, 252 B.R. 50, 64 (Bankr. E.D. Va. 1997), *aff'd,* No. 98-1793, 1999 WL 350943 (4th Cir. Jun. 1, 1999) (quoting *In re Finkelstein*, 901 F.2d 1560, 1564 (11th Cir. 1990)).

The undisputed facts show that Upright is an Illinois entity headquartered in Chicago that advertises to be a national law firm. Upright is registered with the South Carolina Secretary of State as an entity operating in South Carolina and has "partners" who are South Carolina licensed attorneys. Through online marketing, Upright connects with individuals to provide debt relief through a main intake office in Chicago.

Plaintiffs discovered Upright through online advertisements. On June 18, 2018, the parties electronically executed a document titled *Attorney/Client Legal Services Agreement for Chapter 13 Bankruptcy* ("Chapter 13 Retainer Agreement"), which provides Plaintiffs hired Upright for the flat fee of $3,700.00 plus the filing fee of $310.00, and other fees may be charged later. Plaintiffs agreed to pay Upright $1,550.00 of the flat fee plus the filing fee, with the remainder to be paid through their Chapter 13 plan distributions.

The Chapter 13 Retainer Agreement was electronically signed by Plaintiffs. Upright signed by typing a South Carolina attorney's name ("SC Partner I") after an "/s/".[5] The Chapter 13 Retainer Agreement states that ***after*** Plaintiffs' selection of that Chapter 13 path, "[t]he Partner will review this Agreement with Client, including which chapter of bankruptcy

[5] A Partnership Agreement filed under seal indicates that partners grant Upright authority to electronically sign on their behalf.

Client is eligible for." The Chapter 13 Retainer Agreement also allows Plaintiffs to cancel but provides "Client will be charged for all Services up to the date of cancellation . . ."

There is no evidence that Plaintiffs spoke with an appropriately licensed or knowledgeable attorney prior to executing this Chapter 13 Retainer Agreement. There is also no indication how Plaintiffs obtained sufficient information to decide it was appropriate to sign a fee agreement to file bankruptcy, to decide to file under Chapter 13, to understand what the Chapter 13 plan distribution process mentioned in the Chapter 13 Retainer Agreement entails, or more importantly, to determine whether that process would provide sufficiently prompt relief to adequately address Plaintiffs' problems.

Although the Chapter 13 Retainer Agreement had SC Partner I's name affixed to it, Plaintiffs' case was not called to his attention until after its execution. After SC Partner I did not respond to Upright's communications requesting he contact Plaintiffs, the case was reassigned to SC Partner II on June 25, 2018. Plaintiffs' initial contact with SC Partner II occurred on July 2, 2018 – two weeks after Plaintiffs contacted Upright, executed the Chapter 13 Retainer Agreement, and began paying fees.[6] Upright's time records indicate charges of $776.50 for work done from June 18, 2018 through July 2, 2018 and nothing thereafter. The only legible time entry from any partner was on July 2, 2018, for 0.7 hours when he "[r]eviewed and approved case."

On August 14, 2018, Plaintiffs contacted Upright to cancel their agreement and request a refund of the $1,290.00 paid to Upright. An email informed Plaintiffs they would receive only a partial refund within 30 business days.

[6] Plaintiffs paid Upright $670.00 before they were contacted by a South Carolina licensed attorney.

Plaintiffs sought different bankruptcy counsel and filed a petition for Chapter 13 relief on August 29, 2018. Counsel filed this adversary on October 10, 2018. Plaintiffs received a refund of $763.00 in late October. They received the remaining $527.00 by agreement reached between Plaintiffs' counsel and Upright in this proceeding.[7]

In summary, Plaintiffs contracted with and paid Upright for legal services for a Chapter 13 case before they consulted with appropriate counsel. The evidence shows legal advice was minimal, the value of any services was questionable, and without the filing of this adversary proceeding, a full refund would not have been possible. Severing the attorney/client relationship and refunding amounts paid does not negate these facts. A review of this and similar conduct is squarely within the authority and responsibility of this Court. In fact, the Bankruptcy Code and applicable rules facilitate Court oversight of a Debtor's transactions with attorneys and debt relief agencies. *See e.g.*, 11 U.S.C. §§ 110, 329, 526; Fed. R. Bankr. P. 2016; SC LBR 2016-1, 2090-1, 9011-1.

Bankruptcy courts are also empowered by § 105(a), which authorizes them to "issue any order . . . necessary or appropriate to carry out the provisions of this title." Section 105(a) states that "[n]o provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). Therefore, the Court has the independent authority to monitor and review Upright's conduct and issue sanctions when appropriate.

Plaintiffs allege and the record contains evidence of questionable or ineffective practices by Upright as pre-petition counsel for Plaintiffs. However, determining the facts

[7] See ECF. No. 32, dismissing Counts I and II but reserving all rights as to Count III.

will require the Court to weigh the evidence at the appropriate time. Further, the undisputed facts do not support Upright's Motion.

IT IS, THEREFORE, ORDERED that Upright's Motion for Summary Judgment is denied. On or before **4:00 p.m. on July 12, 2019,** the parties shall file a Joint Pretrial Order that includes the requisite information set forth in the Scheduling Order entered on January 30, 2019.

IT IS FURTHER ORDERED that a pre-trial conference will be held before this Court on **July 23, 2019** at the **Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC 29306-2355** to determine the trial date, hear any outstanding motions, and consider any other matters appropriate under the circumstances of the case.

AND IT IS SO ORDERED.

FILED BY THE COURT
06/21/2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

US Bankruptcy Judge
District of South Carolina

Entered: 06/21/2019