U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **23-02200-hb**

Order

The relief set forth on the following pages, for a total of 25 pages including this page, is hereby ORDERED.

FILED BY THE COURT
04/05/2024

Entered: 04/05/2024

Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 23-02200-HB
Carnetha Shont'e White,	Chapter 7
Debtor(s).	**ORDER REGARDING** ***MOTION FOR REVIEW OF CONDUCT OF RECOVERY LAW GROUP, APC***

THIS MATTER came before the Court for a hearing on March 8, 2024 to consider the *Motion for Review of Conduct of Recovery Law Group, APC* (the "Motion") filed by B. Keith Poston on behalf of the United States Trustee (the "UST")[1] and the Response thereto of Recovery Law Group, APC ("Recovery").[2] The parties filed a Joint Statement of Dispute prior to the hearing (the "JSD").[3] The hearing was attended by Poston and Assistant United States Trustee Linda K. Barr on behalf of the UST and William Joseph Virgil Barr ("Barr") on behalf of Recovery. At the hearing, the Court admitted exhibits, including an audio recording of the 11 U.S.C. § 341[4] meeting of creditors held in the above-captioned case on September 8, 2023 (the "341 Meeting") and attended by Debtor, Barr, and Chapter 7 Trustee Michelle L. Vieira (the "Trustee").[5]

FINDINGS OF FACT

The parties agree Recovery is a "debt relief agency" as defined in § 101(12A) and provided bankruptcy assistance to Debtor, and Debtor is an "assisted person" as defined by § 101(3).[6] Barr is an attorney admitted to practice in the U.S. District Court for the District of South Carolina (the "District Court"), and therefore admitted to practice in the U.S. Bankruptcy Court for the District

[1] ECF No. 9, filed Nov. 7, 2023.
[2] ECF No. 21, filed Jan. 19, 2024.
[3] ECF No. 25, filed Feb. 2, 2024.
[4] References to statutes that do not specify which title of the U.S. Code in which they are contained are to those of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*).
[5] UST's Ex. 4.
[6] JSD, Facts Not in Dispute.

of South Carolina ("Court"), since March 8, 2021.[7] In this Order, an attorney admitted to practice in the District Court, and thus in this Court, will be referred to as an "admitted attorney." Barr filed the above-captioned case as an admitted attorney for the debtor, Carnetha Shont'e White, listing Recovery as his law firm. Recovery's Response states that Barr is a "W-2 employee of and an attorney employed by Recovery."

Relevant Events Regarding the Above-Captioned Case

The South Carolina State Housing Finance and Development Authority (the "Housing Authority") filed a complaint on January 6, 2023, against the above-captioned Debtor and others in the Court of Common Pleas for Williamsburg County, South Carolina (2023-CP-45-00012) (the "Foreclosure Action") seeking to foreclose its mortgage that encumbered Debtor's residence located at 60 Shady Lane, Kingstree, SC 29556 (the "Property").[8]

Recovery's Response alleges that Debtor first contacted Recovery on January 11, 2023. Debtor testified at the 341 Meeting that communication with Recovery began via email in February 2023 after viewing Recovery's website in an attempt to save the Property from foreclosure. Recovery's website has the heading "Recovery Law Group, Nationwide Bankruptcy Attorneys Wadja & Associates, P.C."[9] Recovery's recent website representations include that it does not "offer cookie cutter solutions" but rather "stud[ies] each case thoroughly and prepare[s] a customized legal plan to help you find the best solution as per your circumstances and needs." Its website assures potential clients that "we are here to assist you, no matter if you are snowed under credit card debt or fighting to delay foreclosure." Regarding foreclosure, Recovery represents that "[w]e can help you find the right option for preventing foreclosure, fighting for your home, making

[7] https://www.scd.uscourts.gov/Attorney/attorneyID.asp
[8] UST's Ex. 2.
[9] UST's Ex. 9.

the payments due from the mortgage in a Chapter 13 Bankruptcy, or walking away for a fresh start", and it will "connect you with reliable lawyers to help with foreclosure or bankruptcy depending on what situation is right for you." The website also speaks to Chapter 7 filings, stating that "[a]fter your consultation, the attorney will prepare schedules and petitions that contain details of your wage, income, and assets."

Debtor thought the initial communication was with an individual named "Patrick or Patricia Mulcahy". Recovery alleges that Debtor was mistaken about this person's name, and it was instead an individual named Patrick McNulty, purportedly "an experienced and licensed bankruptcy attorney"—but not an "admitted attorney"—who had a general consultation with Debtor in his capacity as support paralegal to Barr. Debtor, a resident of South Carolina with the Property located here, paid Recovery $200.00 on February 22, 2023, and $1,613.00 on February 23, 2023, for a total of $1,813.00.[10]

Barr stated at the 341 Meeting that once Recovery is paid, their intake personnel determine what documents are needed from a debtor. Recovery's Response alleges that Recovery's support staff began preparing the Debtor's petition and schedules in early March 2023 because the pending foreclosure made filing the petition an emergency.

On April 26, 2023, a hearing was held in the Foreclosure Action which was attended by counsel for the Housing Authority.[11] Unbeknownst to counsel for the Housing Authority and the state court, Debtor was present at the courthouse but not at the hearing. After learning of Debtor's attempt to be present at the hearing, the state court held a telephonic conference on April 27, 2023, at which Debtor indicated she was considering a possible bankruptcy filing and was working with

[10] JSD, Facts Not in Dispute; ECF No. 1, Statement of Financial Affairs, Item 16. The Court has been unable to locate a copy of the initial fee agreement in the record.
[11] UST's Ex. 3.

a bankruptcy firm to complete the required paperwork. The state court informed Debtor that the Property would be sold on June 5, 2023, and Debtor said she would submit the required paperwork to the bankruptcy firm as soon as possible. At the time of the hearing, Debtor owed the Housing Authority approximately $61,985.73, with an interest rate of 4.375% per annum.

The Property was sold at the foreclosure sale on June 5 or 6, 2023.[12]

On June 13, 2023, counsel for the Housing Authority in connection with the Foreclosure Action sent Debtor a letter offering $3,000.00 to vacate and remove all personal belongings from the Property on or before July 13, 2023.[13]

Recovery's Response states "[o]perational policies are set in place in which, prior to accepting payment, clients directly communicate with and are advised by Attorney Barr," but no details thereof were given. There is no evidence that Debtor consulted with Barr or an admitted attorney before the fee was paid to Recovery in February of 2023. To the contrary, Barr stated at the 341 Meeting that he first spoke with Debtor about a possible bankruptcy filing sometime in June 2023 "once we had all the documents and were ready to file." Barr and Debtor reside in the same county and this meeting took place at Barr's office.

On July 23, 2023, five (5) months after the retainer was paid and almost two (2) months after the Property was sold at foreclosure, Debtor filed the petition for relief under Chapter 7 of the Bankruptcy Code signed by Barr as counsel, with his firm listed as "Recovery Law Group/William Barr."[14] Despite the pre-petition foreclosure sale, the address listed for Debtor on the line "where you live" is the Property. Debtor also listed a post office box as her mailing

[12] Debtor testified at the 341 Meeting that the Property was sold on June 6, 2023. It is not clear whether Debtor was mistaken, and the Property was actually sold on June 5, 2023 as the state court order admitted into evidence indicated it would be.
[13] Recovery's Ex. B.
[14] ECF No. 1.

address. On the petition date, Debtor filed a Certificate of Credit Counseling that indicates credit counseling occurred on March 7, 2023, shortly after the retainer was paid.[15] Copies of Payment Advices were also filed on the petition date, which cover pay periods from June 20, 2022 to May 14, 2023.[16]

Debtor's Schedule A/B does not list any ownership interests in any real property and indicates "Debtor to [receive] $3k for her keys for the repossession and sale of former primary home." Debtor listed the Housing Authority on Schedule D, with the collateral description including the Property and a statement that "home was foreclosed." Schedule J indicates Debtor has two (2) dependent minor children and is employed as a home health caregiver.

Debtor's Statement of Financial Affairs lists the Foreclosure Action as "pending," but also indicates the Property (listed as worth $60,000.00) was repossessed and foreclosed on July 13, 2023. Debtor's Statement of Intention for Individuals Filing Under Chapter 7 indicates an intention to surrender the Property.

Also included with the petition is a Disclosure of Compensation of Attorney for Debtor(s) (Form B2030) (the "Disclosure of Compensation") indicating the full $1,800.00 retainer was received from Debtor pre-petition. The Disclosure of Compensation indicates that, in return for this fee, Recovery/Barr "agreed to render legal service for all aspects of the bankruptcy case, including . . . [a]nalysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy" and "[p]reparation and filing of any petition, schedules, statement of affairs and plan which may be required." The actual retainer agreement, for either Chapter 13 or Chapter 7, is not included on the docket or in evidence.

[15] ECF No. 4.
[16] ECF No. 6. Debtors are only required to provide payment advices for the sixty (60) days preceding the petition date. § 521(a)(1)(B)(iv).

On September 8, 2023, the 341 Meeting was held. Barr stated at the 341 Meeting that the case was originally going to be filed under Chapter 13, but it was decided Chapter 7 would be more suitable because the Property had already been sold at foreclosure. Barr told the Trustee at the 341 Meeting that the case was not filed prior to the foreclosure sale because there were "some documents and some things" that Recovery needed and was not able to obtain from Debtor in time. Debtor testified at the 341 Meeting that the purpose of seeking counsel from Recovery was to save the house from foreclosure and Recovery was provided the documents they requested.[17] Debtor stated Recovery "drag[ged] and drag[ged] and drag[ged] so I [lost] the house."

The evidence includes the front of a check dated September 8, 2023—the same day as the 341 Meeting—from Recovery to Debtor for $1,813.00 with a note for "fee's [sic] & filing fee"[18] and Recovery has indicated that this was a refund of fees. However, there is nothing in the record evidencing Debtor's negotiation of the check.

On October 16, 2023, counsel for the UST emailed Barr and another attorney at Recovery attaching a recording of the 341 Meeting and asking them to—by October 25, 2023—respond to Debtor's statements made at the meeting and explain why this case was not filed until months after Debtor had paid Recovery and lost the Property at foreclosure.[19] On October 25, 2023, Barr notified the UST that he would provide responses by October 27, 2023, but no responses were provided and Recovery did not request additional time to respond.[20] Recovery's Response

[17] Debtor stated at the 341 Meeting that Recovery requested bank statements, pay stubs, and "tax paperwork" and "usually when they send me something, I usually fill it out right then and there." Debtor stated that even though everything they requested was sent, "they didn't get it in in time enough for me to save my house."
[18] Recovery's Ex. A.
[19] UST's Ex. 8.
[20] JSD, Facts Not in Dispute.

indicates that Barr was experiencing adverse personal circumstances at that time related to the illness of his father.[21]

On November 7, 2023, the UST filed the Motion. In the Motion, the UST asserts that the facts of this case warrant the disallowance and return of fees paid by Debtor to Recovery as excessive. The UST contends Recovery violated § 526(a)(1) and a Consent Order entered by this Court in *In re Leonard*, C/A No. 21-01299-hb, at ECF No. 80 (the "Leonard Consent Order") by allowing an attorney who is not an admitted attorney to provide bankruptcy assistance to Debtor and violated § 526(a)(1) and (3) and the Leonard Consent Order by receiving legal fees from Debtor before an admitted attorney analyzed Debtor's financial situation and advised Debtor whether to file for bankruptcy and the chapter. The UST asserts that as a result, the retainer agreement between Debtor and Recovery is void and unenforceable pursuant to § 526(c)(1). Further, the UST argues that Recovery's conduct in this case mirrors its conduct at issue in an order entered in *In re Green*, C/A No. 20-03190-hb, ECF No. 74 (the "Green Order"), and therefore the Court should impose civil penalties against Recovery and enjoin Recovery from continuing to receive funds from citizens in South Carolina and filing bankruptcy cases in this Court until it can adequately demonstrate to the Court that it has corrected this behavior and is acting in accordance with the Leonard Consent Order. Moreover, the UST requested that Recovery be required to show cause why it should not be barred from soliciting for filing and filing cases in this Court because (1) it has violated the Leonard Consent Order by failing to have an admitted attorney analyze a prospective debtor's financial situation and advise them whether to file bankruptcy and under which chapter they should file prior to accepting payment, and (2) it has engaged in the

[21] His father died in December 2023. He was a member of the bar of this Court for many years.

unauthorized practice of law by having persons who are not admitted attorneys advise Debtor on whether to file bankruptcy and under which chapter they should file.

On November 14, 2023, the Court scheduled a hearing on the Motion for December 15, 2023, with objections to the Motion due December 7, 2023.[22] By consent, the hearing was continued to January 9, 2024,[23] and then again to February 9, 2024, with Recovery to file any response to the Motion by January 19, 2024 and the parties to file the JSD by February 2, 2024.[24]

On January 19, 2024, Recovery filed a Response to the Motion. The Response alleges:

> As part of [Recovery's] process, all prospective Debtors, regardless of the jurisdiction where a case may be filed, are instructed to submit all requisite documents via [either] the US Mail, facsimile transmission, email, or through the specially designed [Recovery] Client Portal. This process is instituted to ensure all pertinent documents and information regarding a Debtors assets and debts, credit counseling course compliance and personal identifying information are received and accessible in the client's file. [Recovery] admits in the process of of [sic] gathering documents, Debtor did not provide correct documents and repeatedly sent duplicates of documents already sent and received. [Recovery's] employed support staff document specialists worked with the Debtor, as they do with all clients of [Recovery], in order to get the correct documents in order to file a proper bankruptcy petition and schedules as required under the US Bankruptcy Code. In the instance of this case, Debtor's filing was eventually delayed because Debtor did not timely provide correct and necessary documen[t]s.

The above is merely a quotation of unsubstantiated statements included in the Response. No evidence was presented indicating what Debtor failed to do to complete the filing of a bankruptcy case prior to the foreclosure, adequately explaining why Debtor paid the fee before consulting with an admitted attorney, or explaining the delay between payment of the fee, consultation with an admitted attorney, and the filing of the bankruptcy case. Recovery asserts it cannot provide further details without violating the attorney-client privilege.

[22] ECF No. 12.
[23] ECF Nos. 14-15.
[24] ECF Nos. 17-18.

Recovery's January 19, 2024, Response states Debtor "has expressed her happiness at the filing of the Chapter 7 case and believes herself to be in a better position than had she filed a Chapter 13 case" and "has never expressed any dissatisfaction" with Barr or Recovery. However, at the hearing, in response to a question about why the November 2023 Deficiency Notice for Debtor's failure to file a Financial Management Course Certificate[25]—issued around the same time this Motion was filed—had not been cured, Barr indicated the reason is that his office has reached out to Debtor about completing the course but has been unable to get a hold of her to cure that deficiency and move this case toward conclusion. As of the date of entry of this Order, Debtor has not filed the Financial Management Course Certificate and therefore has not received a discharge.

Recovery's Response downplays the unfortunate facts of this case and fails to take responsibility for its role by contending that the UST "continuously scrutinizes all cases filed by debtors who have hired [Recovery], dredging for errors and potential missteps in a 'gotcha' type search, so it may file a motion like the one filed here", fails to appreciate all the other Chapter 7 cases filed by Recovery that have been successful, and "refuses to allow simple errors be rectified through simple amendments," and asking the Court to address "what [Recovery] believes to be the arbitrary and capricious harassing behavior by the UST."

Prior Orders Regarding Recovery

1. Green Order

In re Green, C/A No. 20-03190-hb is a bankruptcy case filed in this Court on August 7, 2020. In that case, a South Carolina debtor (Green) entered into a retainer agreement with Recovery on July 10, 2020, at a time when no admitted attorney was employed by or associated

[25] On November 8, 2023, the Court issued a Deficiency Notice for Debtor's failure to file a Financial Management Course Certificate (ECF No. 10) which, if not filed, will prevent her receipt of a discharge in this case. *See* § 727(a)(11).

with Recovery. Twenty-six (26) days later, Recovery executed an employment agreement with admitted attorney Andrew Brown to file bankruptcy cases in South Carolina. The voluntary petition—using Brown's District Court admission, bankruptcy CM/ECF permissions, and electronic signature—was filed thereafter with Recovery listed as his law firm. Green had discovered Recovery through its website, which at the time contained inaccurate statements about Recovery's admitted attorneys in South Carolina and their bankruptcy experience. On November 3, 2021, years before this case was filed, the Court entered the Green Order.[26] The misrepresentations are detailed therein and include:

> [Nicolas] Wajda [then sole owner of Recovery] testified that an attorney licensed in South Carolina was hired by Recovery Law prior to Brown's association ("Attorney 1"). Attorney 1 was advertised as its "local bankruptcy expert" for South Carolina. The parties stipulated that Attorney 1 is located in Georgia and Wajda testified that Attorney 1 misrepresented she was an admitted attorney. Even after discovery of this fact, as late as August 2021, Recovery Law's website still advertised Attorney 1 as a "local bankruptcy expert" in South Carolina along with another individual ("Attorney 2") who also is not an admitted attorney, and, therefore, cannot file cases in this Court. William Joseph Virgil Barr was later hired and added to Recovery Law's website along with Attorney 1, Attorney 2, and Brown (who was still advertised as one of its "local bankruptcy experts" as late as August 2021 despite not working for Recovery Law since March 2021). Recovery Law's website [then] describe[d] Mr. Barr as having "over five years' experience in filing and or drafting Chapter 13 and Chapter 7 Bankruptcy matters to include, Conduit Plans, Adversarial Proceedings, and other Bankruptcy related proceedings." While Mr. Barr has prior experience working with his father as a nonattorney, he only became a member of the South Carolina bar on January 26, 2021, and an admitted attorney on March 8, 2021.

P. 8-9 (footnotes omitted).

The Green Order found that staff at Recovery who were not admitted attorneys advised Green about whether to file for bankruptcy and under what chapter, and an admitted attorney (Brown) was not assigned to Green's case until the debtor had already paid Recovery, the

[26] UST's Ex. 10, entered in *In re Green*, C/A No. 20-03190-hb (ECF No. 74). Barr made an appearance in that case in 2021 on behalf of Recovery and is now listed as attorney of record for the debtor in that case in CM/ECF.

bankruptcy documents had been prepared, and the case was ready to be filed. Brown never spoke with Green and did not review documents completed by Recovery's non-admitted attorney personnel prior to filing them, and such personnel—without being supervised by Brown—gave legal advice, made legal decisions, and used Brown's filing privileges to file documents. There were also three (3) other cases filed by Recovery and reviewed by the Court in the Green Order in which, among other misconduct by Recovery, personnel at Recovery who were not admitted attorneys provided pre- and post-petition services to the debtors and gave legal advice regarding filing a bankruptcy case in this Court.[27] The Green Order results from the UST's motion in *Green* requesting cancellation of Recovery's retainer agreement with the debtor, disallowance and return of funds received by Recovery from the debtor, and the imposition of sanctions. Recovery's objection to that motion was riddled with misrepresentations that contradicted the record, evidence, and witness testimony. The Court concluded Recovery violated § 526(a)(1), (2), and (3)(A), failed to satisfy its obligations under § 528(a)(1) and (2), failed to adequately disclose compensation as required by § 329(a), and the compensation received was unreasonable under § 329(b); voided the retainer agreement and ordered all fees received by Recovery forfeited pursuant to § 329(a) and (b) as well as § 526(c)(1) and (c)(2)(A) and (C); found that the above acts did not appear to be isolated or accidental, but rather intentional as part of a for-profit scheme; and issued a $1,635.00 sanction payable to debtor under §§ 105(a) and 526(c)(5)(B) to deter future violations of the applicable rules and statutes as Recovery intentionally violated § 526 and engaged in a clear and consistent pattern or practice of violating § 526.

[27] Barr was not involved in all of these cases.

2. Leonard Consent Order

In re Leonard, C/A No. 21-01299-hb is a bankruptcy case filed in this Court on May 11, 2021. Barr was the attorney of record in that case, which was filed approximately two (2) months after he became an admitted attorney. He did not include the name of a law firm on the petition. Debtor Leonard testified at a hearing on August 24, 2021, that he located Recovery by searching online at the end of 2020. His initial contact was with Nicholas Wajda. The Disclosure of Compensation filed by Barr indicates Recovery was paid $2,350.00 in 2020-2021. Issues arose in the case and on December 29, 2021, the UST filed a *Motion for Review of the Conduct of Recovery Law Group, APC, Cancellation of Agreement, Return of Fees, and Other Relief*.[28]

On May 6, 2022, almost a year before Recovery accepted the retainer from Debtor (White), this Court entered the Leonard Consent Order.[29] In the Leonard Consent Order, Recovery stipulated that it received fees from Leonard and provided legal services to him prior to him consulting with an admitted attorney[30] of Recovery; some information contained in the petition, schedules, and statements was not accurate; and some of the inaccurate information may have been identified if a reasonable inquiry had occurred prior to filing those documents, though Recovery asserted that Leonard did not accurately disclose information about his assets. Recovery further ***stipulated*** that (1) prior to the payment of any legal fees, clients of Recovery who seek to file for bankruptcy protection in this Court will speak and consult with an admitted attorney who will analyze the prospective debtor's financial situation and counsel the client as to the merits of filing a bankruptcy petition and the chapter under which the client should file; (2) an admitted attorney will be responsible for the preparation and filing of any petition, schedules, statement of affairs,

[28] *In re Leonard*, C/A No. 21-01299-hb, ECF No. 50.
[29] *Id*. at ECF No. 80; UST's Ex. 11.
[30] Defined in the Leonard Consent Order entered in this Court as "an attorney who is admitted to practice before the Court."

plan, and other required documents filed with this Court,[31] and for the supervision of any paralegals assigned to assist with cases in this Court; (3) should Recovery fail to comply with (1) or (2), it will stop soliciting for filing and filing cases in this Court until it can comply with those provisions; and (4) it would return half the fees debtor paid it to debtor and pay the other half to the U.S. Treasury as a civil penalty. The Leonard Consent Order provided these stipulations are effective and fully enforceable, the Court shall retain jurisdiction over all matters in the order, including disputes arising under, and the construction, interpretation, modification, and enforcement of the order and the stipulations and agreements approved by the order, and closure of the case shall not excuse compliance with the terms of the order. Recovery indicated in the Leonard Consent Order that it "understands and agrees that the UST has not agreed to forbear from taking any other lawful action against [Recovery] either in [the] United States Bankruptcy Court for the District of South Carolina or otherwise."

3. Bradley Consent Order

In re Bradley, C/A No. 22-03051-hb is a bankruptcy case filed in this Court on November 7, 2022. Barr filed that case as an admitted attorney, listing Recovery Law Group/William Barr as his law firm. On March 28, 2023, approximately one (1) month after Recovery accepted the retainer from Debtor (White), the UST filed a *Motion for Review of Attorney Conduct, Return of Fees, Sanctions, Injunctive Relief, and Rule to Show Cause*,[32] detailing irregularities in that case. On May 18, 2023, the Court entered a *Consent Order Resolving the United States Trustee's Motion for the Review of Conduct of Recovery Law Group, APC* (the "Bradley Consent Order").[33] In the

[31] "Preparation" is defined as including the undertaking of a reasonable investigation into the accuracy of the information contained in any petition, schedules, statement of affairs, plan, and other documents filed with the Court.
[32] *In re Bradley*, C/A No. 22-03051-hb, ECF No. 73.
[33] *Id.* at ECF No. 94; UST's Ex. 12.

Bradley Consent Order, Recovery agreed that no attorney who is not an admitted attorney[34] will act as a paralegal with clients from South Carolina, and that all the terms and conditions of the Leonard Consent Order—which were incorporated therein by reference—remained binding and enforceable. The Bradley Consent Order further provided closure of that case shall not excuse compliance with the terms of the order and the Leonard Consent Order, the stipulations of the Leonard Consent Order referenced above remain effective and fully enforceable, and the Court shall retain jurisdiction over all matters in the order, including disputes arising under, and the construction, interpretation, modification, and enforcement of the order and the Leonard Consent Order. Recovery again indicated in the Bradley Consent Order that it "understands and agrees that the UST has not agreed to forbear from taking any other lawful action against [Recovery] either in [the] United States Bankruptcy Court for the District of South Carolina or otherwise."

APPLICABLE AUTHORITIES

The Bankruptcy Code requires an attorney representing a debtor in a bankruptcy case to file a statement of compensation paid or agreed to be paid for legal services related to the case. 11 U.S.C. § 329(a); *see also* Fed. R. Bankr. P. 2016(b). "If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to. . . the entity that made such payment." 11 U.S.C. § 329(b); *see also* Fed. R. Bankr. P. 2017 (providing the Court authority to determine whether payments by debtors to their counsel for pre- or post-petition bankruptcy services are excessive). "It is the attorney's burden to show the reasonableness of his fees." *In re Busche*, No. 15-02559-DD, 2015 WL 6501157, at *3 (Bankr. D.S.C. Oct. 27, 2015) (citing *In re Kestner*, No. 12–32831–RAG, 2015 WL 1855357, at *10 (Bankr. D. Md. Apr. 20, 2015) ("Once a question has been raised

[34] Again defined as "an attorney who is admitted to practice before the Court."

about the reasonableness of an attorney's fees under section 329, the attorney bears the burden of establishing that the fee is reasonable.")).

An attorney who seeks to represent a debtor in a bankruptcy case has a duty to analyze the client's financial situation, advise the client about whether to file for bankruptcy and if so, under what chapter, and assist the client in completing the petition, schedules, statements, and other documents necessary for the filing. *See In re Green*, No. 20-03190-HB, 2021 WL 5177427, at *11 (Bankr. D.S.C. Nov. 3, 2021) (citing *In re Haynes*, 216 B.R. 440, 443 (Bankr. D. Colo. 1997)).

> Advising a debtor regarding which documents to file with the court and/or the completion of the bankruptcy petition, schedules and other pleadings constitutes the practice of law. Conduct constituting the practice of law includes a wide range of activities, including the preparation of legal instruments and advising clients of legal matters. *State v. Buyers Serv. Co., Inc.*, 292 S.C. 426, 357 S.E.2d 15, 17 (1987); *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576, 578 (1995) (holding that the preparation of legal documents for presentation in family court constitutes the practice of law when the preparation involves the giving of advice, consultation, explanation, or recommendations on matters of law). "Unquestionably, advising a person to file bankruptcy, and under what chapter to file, constitutes legal advice that can only be given under South Carolina Law by licensed attorneys." *In re Fleming*, C/A No. 17-05544-jw, slip op. *5 (Bankr. D.S.C. Feb. 22, 2018).

In re Weathers, 604 B.R. 13, 20-21 (Bankr. D.S.C. 2019).

Section 526 of the Bankruptcy Code places certain restrictions on the activities of debt relief agencies. Among those restrictions, a debt relief agency shall not:

> (1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;
> (2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading; [or]
> (3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—
>
> (A) the services that such agency will provide to such person; or
> (B) the benefits and risks that may result if such person becomes a debtor in a case under this title[.]

11 U.S.C. § 526(a).

> The Bankruptcy Code provides various remedies for noncompliance, including:
>
> > (1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.
> > (2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—
> >
> > > (A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person . . . [or]
> > > . . . .
> > > (C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

11 U.S.C. § 526(c). If the Court finds that a person intentionally violated § 526 or engaged in a clear and consistent pattern or practice of violating § 526, the Court may enjoin the violation or impose an appropriate civil penalty against such person. 11 U.S.C. § 526(c)(5).

"For purposes of Section 526(c)(5), an intentional violation may be established through circumstantial evidence." *In re Mennona*, No. 21-11967 TBM, 2023 WL 149957, at *26 (Bankr. D. Colo. Jan. 10, 2023) (citing *Law Sols. of Chicago LLC v. Corbett*, No. 1:18-cv-00677-AKK, 2019 WL 1125568, at *7 (N.D. Ala. Mar. 12, 2019), *aff'd*, 971 F.3d 1299 (11th Cir. 2020) ("Because direct evidence of intent is rarely available, a court may infer intent from the totality of the circumstances,' and reckless indifference may be sufficient to establish intent in some cases.")). For instance, an attorney's failure to take legal obligations seriously or to make an effort to comply with the law constitutes intentional conduct, and reckless disregard for the truth is sufficient to establish that a false or misleading statement was made intentionally. *Id.* (citing *Corbett*, 2019 WL 1125568, at *7). "The requirement of intent does not apply to the second

– 'clear and consistent pattern or practice' – category based on the text of the statute." *Id.* (citation omitted). "Instead, a court may find a clear and consistent pattern or practice exists through evidence that the violation was part of 'a standard or routine way of operating.'" *Id.* (quoting *Corbett*, 2019 WL 1125568, at *8); *see also In re Cook*, 610 B.R. 852, 867 (Bankr. N.D. Ill. 2019) (a civil penalty under § 526(c)(5) is warranted when a party repeatedly violates its statutory obligations and chooses to "bury its head in the sand and ignore an obvious issue.").

Injunctive relief under § 526(c)(5) "may include barring an attorney from practicing law in a bankruptcy court." *Mennona*, 2023 WL 149957, at *26 (citing *In re Burnett*, No. 21-02018-dd, 2022 WL 802586, at *13 (Bankr. D.S.C. Mar. 16, 2022) (enjoining Recovery, pursuant to §§ 105(a) and 526(c)(5), from soliciting for filing or filing any bankruptcy cases in the District of South Carolina until Recovery could show that it had employed an admitted attorney and was not engaging in the unauthorized practice of law.)).[35]

"Imposition of a civil penalty under § 526(c)(5)(B) is discretionary but 'largely motivated by factors of deterrence and the culpability of the parties.'" *In re Cook*, 610 B.R. at 869 (quoting *In re Huffman*, 505 B.R. 726, 766 (Bankr. S.D. Miss. 2014)). Section 526 of the Bankruptcy Code does not provide guidance as to what constitutes a proper amount of a civil penalty imposed under § 526(c)(5). Generally, it should not be so burdensome as to be punitive but should be sufficient enough to serve as a deterrent against future noncompliance. *In re Huffman*, 505 B.R. 726, 766

[35] In *Burnett*, C/A No. 21-02018-hb, after Recovery filed a Motion to Reconsider and a hearing was held, the presiding judge at the time, Hon. David R. Duncan, subsequently entered a Stipulation and Consent Order between the UST and Recovery on April 21, 2022, ECF No. 47, lifting some restrictions. That document included the agreement that "[p]rior to the payment of any legal fees, clients of Recovery Law who seek to file for bankruptcy protection in the United States Bankruptcy Court for the District of South Carolina will speak and consult with Recovery Law's Attorney [an admitted attorney] who will analyze the prospective debtor's financial situation and offer counsel's perspective to the client as to the merits of filing a petition in bankruptcy and the chapter under which the client should file…." It was undisputed in that case that "Recovery Law received fees from the debtor and provided legal services to the debtor prior to the debtor consulting with an attorney of Recovery Law admitted to practice before this Court…"

(Bankr. S.D. Miss. 2014) (citation omitted). The presence of conduct that is both intentional and constitutes a consistent pattern of abuse in violation of § 526 supports the assessment of a heavier penalty. *Id.* In *Huffman*, the Court assessed a civil penalty under § 526(c)(5) against an entity that enrolled the debtor in a debt settlement program but failed to settle any debts for debtor in the fifteen (15) months debtor was enrolled that was approximately four (4) times the amount that the entity received from the debtor. *Id.* In *Hills v. McDermott (In re Wicker)*, 702 F.3d 874 (6th Cir. 2012), the Sixth Circuit affirmed a bankruptcy court's assessment of a $5,000.00 civil penalty under § 526(c)(5) against a bankruptcy petition preparer whose advice to the debtor to conceal involvement in helping prepare the petition by debtor's filing a declaration indicating no help was given in preparing her bankruptcy filing constituted an intentional violation of § 526(a)(2). In *In re Cook*, 610 B.R. 852 (Bankr. N.D. Ill. 2019), the Court assessed a civil penalty of $10,000.00 against a law firm that had filed documents in several cases that were inaccurate and/or incomplete. In *In re Hanawahine*, 577 B.R. 573 (Bankr. D. Haw. 2017), the Court—noting that Hawaii state law provides for treble damages as a form of deterrence—assessed a $4,311.00 civil penalty under § 526(c)(5) against a law firm and local counsel of that firm that had agreed to represent debtors but abandoned them, representing three (3) times the amount of debtors' wages that were garnished as a result of the firm and attorney's failure to file a case.

Bankruptcy courts are authorized by the Bankruptcy Code to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). This equitable power under § 105 includes the power to issue orders of civil contempt. *Palazzo v. Bayview Loan Servicing LLC*, No. DLB-20-2392, 2023 WL 2743357, at *8 (D. Md. Mar. 31, 2023) (citing 11 U.S.C. § 105(a); *In re Walters*, 868 F.2d 665, 669 (4th Cir. 1989)). "A federal court also possesses the inherent power to regulate litigants' behavior and to

sanction a litigant for bad-faith conduct." *Allen v. Fitzgerald, Trustee for Region Four*, No. 7:18-cv-00134, 2019 WL 6742996, at *3 (W.D. Va. Dec. 11, 2019) (quoting *In re Weiss*, 111 F.3d 1159, 1171 (4th Cir. 1997)). "A court can sanction a party based on its inherent power in conjunction with, or instead of, other sanctioning statutes or rules." *Id.* (citing *In re Weiss*, 111 F.3d at 1171; *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991)).

CONCLUSION

Recovery advertised its services online to prevent foreclosure and took money from Debtor in anticipation of the filing of a bankruptcy case in South Carolina. An admitted attorney in South Carolina for Recovery, not Recovery's intake personnel—was required to timely analyze Debtor's financial situation, advise her about whether to file for bankruptcy and if so, under what chapter, and assist her in completing the petition, schedules, statements, and other documents necessary for the filing because these tasks are the practice of law and part of his duties to Debtor. Funds were received by Recovery in February of 2023 from Debtor seeking bankruptcy relief to save a house from foreclosure. There is no indication that Recovery's admitted attorney Barr was even aware of Debtor until June of 2023. Meanwhile, Debtor lost the house to foreclosure.

Debtor testified all that was required to file the bankruptcy prior to foreclosure was done and Debtor intended to do so, and all other evidence supports this testimony. The retainer was paid, credit counseling completed, income information ending with May 2023 was provided, and yet Barr admitted he had no contact with Debtor until June of 2023. Although months passed between the filing of the Motion and the hearing, Recovery failed to present any evidence to contradict Debtor's testimony—no file notes, "Client Portal" records, phone records, correspondence, or emails requesting any missing information needed for filing of the case prior to foreclosure.

The Court concludes Recovery violated § 526(a)(1) and (a)(3)(A). Recovery failed to have an admitted attorney engage in the pre-petition duties noted above even though it indicated on its website that "[a]fter your consultation, the attorney will prepare schedules and petitions that contain details of your wage, income, and assets." Recovery also represented on its website that "[w]e can help you find the right option for preventing foreclosure, fighting for your home, making the payments due from the mortgage in a Chapter 13 Bankruptcy, or walking away for a fresh start", and it will "connect you with reliable lawyers to help with foreclosure or bankruptcy depending on what situation is right for you." However, Recovery did not file a petition for Debtor until almost two (2) months after the foreclosure sale of Debtor's Property and about five (5) or six (6) months after being first contacted and paid by Debtor who sought bankruptcy protection *specifically to save the home*. Recovery's business model failed miserably for this Debtor.

Recovery also violated § 526(a)(2) by making misrepresentations in the Response. The Response alleges that, prior to Recovery accepting payment, clients in South Carolina directly communicate with and are advised by Barr. That is not true in this case. The Response alleges that the delay in filing the bankruptcy was due to Debtor's failure to timely provide necessary documentation and to properly disclose the details of the Foreclosure Action. There is nothing in the record substantiating this claim, and Debtor testified that all requested documents were timely provided. While Recovery claims it cannot provide further details without violating the attorney-client privilege, that privilege belongs to the client, not the attorney. *U.S. v. Farrell*, 921 F.3d 116, 135-36 (4th Cir. 2019). As such, the privilege is a shield belonging to the Debtor, not a sword to be raised by the attorney in defense of this action. *See In re Henderson*, C/A No. 05-14925-JW, slip op. at 12 (Bankr. D.S.C. Oct. 4, 2006) (citing *State v. Thompson*, 329 S.C. 72, 495 S.E.2d 437, 439 (S.C. 1997) (concluding that the assertion of debtor's counsel—against whom motions to

disgorge attorney's fees had been filed by his debtor clients—that he could not disclose communications with debtors in his defense due to the attorney-client privilege was erroneous because the privilege belongs solely to the client)).

The Response further alleges that Debtor "has expressed her happiness at the filing of the Chapter 7 case and believes herself to be in a better position than had she filed a Chapter 13 case" and "has never expressed any dissatisfaction" with Barr or Recovery. Again, there is nothing in the record to suggest this is true, and every reason to believe the opposite. Debtor has lost a home even though there was ample time to file a Chapter 13 petition, stay the Foreclosure Action, and address the debt to the Housing Authority through a Chapter 13 plan. While Debtor's monthly income is modest, the amount owed the Housing Authority—and the interest rate thereon—was also modest. While it is not clear whether Debtor would have succeeded in a Chapter 13 plan and saved the home, Debtor was robbed of the chance to do so by Recovery's negligence and disregard for its duties.

Recovery contends the UST "continuously scrutinizes all cases filed by debtors who have hired [Recovery], dredging for errors and potential missteps in a 'gotcha' type search, so it may file a motion like the one filed here" and requests the Court issue an order "addressing what [Recovery] believes to be the arbitrary and capricious harassing behavior by the UST." If this were true and the record contained any evidence to support such an allegation, the Court would squarely address it. However, the details of the Green Order, the Leonard Consent Order, the Bradley Consent Order, and the facts of this case evidence that this assertion is frivolous.

"The United States Trustee is the 'watchdog' of the bankruptcy system . . . charged with preventing fraud and abuse." *Curry v. Castillo (In re Castillo)*, 297 F.3d 940, 950 (9th Cir. 2002) (citations omitted). As the watchdog of the bankruptcy system, the UST is simply fulfilling its

duties by monitoring and bringing to the Court's attention a law firm that has failed its clients on multiple occasions. The fact that Recovery has filed other Chapter 7 cases that have ultimately been successful does not remove its consistent failure, demonstrated by the various orders discussed herein and the conduct in the current case, to make sure an admitted attorney advises the debtor at *all stages* of the bankruptcy process. Further, the failure here is not a "simple error[]" that can "be rectified through simple amendments," but an irreversible, avoidable mistake that has set the Debtor's life down an unnecessary path.

The Court concludes that the violations of § 526 in this case were intentional, and part of an intentional for-profit scheme, that Recovery failed to take its legal obligations seriously, and its Response shows a disregard for the truth and blames others—including the injured party—for its own shortcomings.

Recovery ***stipulated*** on May 6, 2022 in the Leonard Consent Order "prior to the payment of any legal fees, clients of [Recovery] who seek to file for bankruptcy protection in [this Court] will speak and consult with Recovery Law's Attorney [an attorney who is admitted to practice before the Court] who will analyze the prospective debtor's financial situation and offer counsel's perspective to the client as to the merits of filing a petition in bankruptcy and the chapter under which the client should file" and should Recovery fail to comply, ***"it agrees to stop soliciting for filing and filing cases in the District of South Carolina until it can comply with those provisions."*** The undisputed facts clearly show that Recovery violated this stipulation, and therefore must suffer the agreed consequences. Assuming Recovery has clients with cases that need to be filed promptly, the Court will delay the effective date of some consequences to allow a short period of adjustment.

Under these circumstances, the compensation paid by Debtor to Recovery exceeds the reasonable value of the services provided, which services thus far appear to have no value. Therefore, the retainer agreement is cancelled pursuant to § 329(b).

The Court also finds it appropriate, considering Recovery has had ample warning and numerous chances to correct its procedures and considering the substantial harm done to Debtor in this case, to issue a civil penalty against Recovery pursuant to § 526(c)(5)(B). In determining the appropriate civil penalty to be assessed against Recovery, the Court considers the fee Debtor paid ($1,813.00) and the harm suffered. Debtor's loss of the opportunity to save the home through a bankruptcy proceeding is considerable, as one's home is typically one's most valuable and necessary asset. To compensate Debtor, and to deter Recovery from further violating the Leonard Consent Order and applicable authorities, the Court finds that a $10,000.00 civil penalty under § 526(c)(5)(B) is appropriate, representing approximately three (3) times Recovery's fee ($5,500.00) plus an additional $4,500.00 for Debtor's loss. A factor in the $10,000.00 calculation is the filing fee returned or to be returned to Debtor because of the cancellation of the retainer agreement. In other words, if Recovery can show proof that it returned or returns the $1,813.00 in fees to Debtor, the remaining amount due from Recovery to Debtor will be $8,187.00.

The UST did not request that admitted attorney Barr be individually sanctioned nor barred from soliciting for filing or filing cases in this Court and clarified that distinction at the hearing.

IT IS, THEREFORE, ORDERED:

1. Pursuant to 11 U.S.C. § 329(b), the retainer agreement between Recovery Law Group, APC and Debtor Carnetha Shont'e White is void and cancelled;
2. Pursuant to 11 U.S.C. § 526(c)(5)(B), the Court assesses a civil penalty against Recovery Law Group, APC of $10,000.00—inclusive of the $1,813.00 in fees paid to Recovery—

which shall be paid to Debtor Carnetha Shont'e White **within thirty (30) days of the entry of this Order,** and Recovery shall file proof of Debtor's receipt of such payment **within forty-five (45) days of entry of this Order**;

3. Pursuant to the stipulations in the Leonard Consent Order and as an agreed consequence for violations thereof,

    a. Recovery Law Group, APC is hereby barred from soliciting for filing cases in the United States Bankruptcy Court for the District of South Carolina **effective as of the date of entry of this Order**, and

    b. Recovery Law Group, APC is hereby barred from filing cases in the United States Bankruptcy Court for the District of South Carolina **effective on Monday, April 22, 2024, at noon**,

    until such time as it can demonstrate to the Court, through written application and, if necessary, credible testimony at a hearing, that it has effectively changed its internal procedures to address the issues identified herein and that it is in compliance with the Leonard Consent Order and the Bradley Consent Order. Recovery shall be responsible for initiating any such written application or request for hearing by a filing on the docket in the above-captioned case; and

4. Should Recovery Law Group, APC fail to comply with paragraphs (2) or (3) above, the Court may impose additional sanctions to induce compliance, including fines, without further notice or hearing.