UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Charles Style,

Debtor.

Case No. 02-06803-W
Chapter 7

ORDER GRANTING MOTION OF UNITED STATES TRUSTEE FOR IMPOSITION OF SANCTIONS AGAINST ATTORNEY FOR DEBTOR

This proceeding came before the court on the motion of the United States Trustee (UST) for an order imposing sanctions against the attorney for the debtor, Harvey W. Burgess. No party, including Mr. Burgess, filed a response to the motion. Mr. Burgess appeared at the hearing and opposed the motion.[1] W. Ryan Hovis, the chapter 7 trustee in this case, appeared at the hearing and supported the motion.

Mr. Burgess, as attorney for the debtor, filed this case under chapter 7 of the Bankruptcy Code on June 7, 2002. Mr. Burgess files a significant number of bankruptcy cases and has done so for several years.

The UST argued that the schedules and statements filed by Mr. Burgess for the debtor in this case were so inaccurate and of such poor quality as to warrant the imposition of sanctions against Mr. Burgess. The court agrees.

[1] The court allowed Mr. Burgess to present his case in opposition to the motion even though Mr. Burgess had no reasonable excuse for his failure to file a responsive pleading to the UST's motion. The notice of the hearing on the motion required that any party objecting to the relief sought must file a written response and must serve a copy of the response on the party seeking relief within 5 days of the hearing. The notice also reminded parties that objections must comply with Local Bankruptcy Rule 9014-4. The notice provided that any party failing to comply with these requirements may be denied the opportunity to be heard.

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Mr. Burgess himself admits that the schedules he filed in this case were, in his words, "totally a mess." In fact, the schedules and statements were worse than a mess, they were woefully inadequate. On the debtor's "Schedule A - Real Property," there were two automobiles listed. Obviously, automobiles are not real property. No secured claims or creditors relating to the automobiles were disclosed at any place in the schedules and statements, including on "Schedule D - Creditors Holding Secured Claims", although the debtor testified at his meeting of creditors that there are liens on both the automobiles listed on Schedule A.[2] If Mr. Burgess knew that there were liens on the debtor's automobiles, he had a duty to disclose them. If the debtor had not informed Mr. Burgess about the liens, Mr. Burgess should have asked the debtor about the existence of such liens.

The debtor's automobiles were not listed under "Schedule B - Personal Property" where the debtor responded "None" to ownership of automobiles. Furthermore, the debtor's "Schedule B - Personal Property" listed absolutely nothing - including no cash, no clothing, and no household goods and furnishings. Any bankruptcy attorney acting competently should know that each debtor owns some clothing and household goods and in fact, the debtor testified at his meeting of creditors and disclosed in his amended schedules that he owned cash, clothing and household goods.

Under "Schedule C - Property Claimed as Exempt," the debtor listed "real property" consisting of the two automobiles listed on Schedule A. In support of the exemptions claimed, the debtor cited "SCCA § 15-41-30 (11)(B)." Under South Carolina law, the debtor is entitled to

[2] The debtor's amended schedules reflect ownership by the debtor of only one vehicle.

claim an exemption in one vehicle, not two. Additionally, the law cited by Mr. Burgess in support of the exemptions relates to exemption of wrongful death claims, not automobiles.

On the debtor's "Statement of Financial Affairs," question 1, which requires the listing of the debtor's income for the previous two years and the current year-to date income, the debtor apparently listed how much he had paid Mr. Burgess for fees and his case filing fee. Under question 9, which requires listing of payments related to bankruptcy or debt counseling, the debtor responded "Gross Income 2001, Gross Income 2002." No figures for income were provided.

The debtor's "Statement of Intention" was signed in blank by the debtor and did not state his intent with regard to his automobiles, or anything else, for that matter.

Federal Rule of Bankruptcy 9011 provides, in part, that by presenting a petition, an attorney is certifying that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the factual contentions in the petition have evidentiary support. FRBP 9011(b)(3). FRBP 9011(c) provides for sanctions when an attorney has not met this standard.[3] In this case Mr. Burgess presented the petition, schedules, and statements to the court with blatantly erroneous information. Any attorney acting in a competent manner would have recognized that the debtor's responses were not factual.

The problem posed by this filing is not a new one in this district and in a several recent opinions, the bar has been clearly reminded of the importance of accuracy and completeness in

[3] Pursuant to 11 U.S.C. § 329 and FRBP 2017, the court may also review the debtor's transactions with his attorney and may order disgorgement of fees found by the court to be excessive based on the work performed by the attorney.

the information provided in debtors' petitions, schedules and statements. For example, in the case of *In re Boland,* C/A No. 01-03911, at 2 (Bankr. D. S.C. May 24, 2001), Judge Bishop stated,

> Recently, the Court has noticed several instances in which debtors or their counsel have supplied inaccurate and potentially misleading information to the Court in the petition, schedules, and statement of affairs. This information relates mostly to prior bankruptcy filings, the names and former names of debtors, and Social Security numbers. While the vast majority of inaccurate and inadequate disclosures appear to be unintentional, these instances reflect a casual or lackadaisical indifference by debtors and the debtors' bar to the requirement to supply accurate and truthful information to the court. *This order serves to warn the bar and* subsequent debtors that the Court will not be placed in the position of ferreting the truth from inaccurate and misleading information supplied by debtors and their counsel. Neither the UST, the Clerk, nor creditors and parties in interest should be placed at a similar disadvantage.

It is clear that the Bankruptcy Court has inherent authority pursuant to 11 U.S.C. § 105(a) to impose sanctions when necessary to deter a growing problem in the bankruptcy system. *GE Capital Mortgage v. Asbill (In re Asbill),* C/A No. 3:99-0773-19, slip op. (D. S.C Feb. 23, 2000).

The court notes that this is not the first case in which the court has addressed the performance of Mr. Burgess in his capacity as attorney for a debtor. In the case *In re Walker*, C/A No. 01-11884-W slip op. (Bankr. D. S.C. Feb. 27, 2002), the court found that Mr. Burgess had failed to comply with the requirements of 11 U.S.C. § 329(a) and FRBP 2016(b). The court ordered in that case that Mr. Burgess disgorge $1,199 in fees to his client. The court also ruled, as an alternative holding, that the amount of fees paid to Mr. Burgess in that case was unreasonable because of the poor quality of his work and lack of results produced for his client. This ruling was based, in part, on the chapter 13 trustee's assertions regarding the poor quality

and incompleteness of the schedules filed by Mr. Burgess in the case. In a subsequent order, also in *In re Walker,* the court ruled that Mr. Burgess had failed to comply with the orders of the court and imposed sanctions in the amount of $150 in order to enforce the rules of the court and to deter future abuse by Mr. Burgess. *In re Walker*, C/A No. 01-11884-W slip op. at 2 (Bankr. D. S.C. May 31, 2002).

Additionally, Judge Bishop has required Mr. Burgess to disgorge fees in the amount of $900 paid to him by the debtors in the case *In re Repass*, C/A No. 02-03878-B slip op.(D. S.C. August 26, 2002) due to the poor quality of services provided by Mr. Burgess.

In this case, the UST requested that sanctions in the amount of $2,450 be imposed on Mr. Burgess, with $450 of that amount to go back to the debtor for fees paid in the case. However, at the hearing, the debtor testified that he was satisfied with the performance of Mr. Burgess in his case. Although the court believes the debtor's view of Mr. Burgess' performance to be uninformed or misguided, the court will not instruct Mr. Burgess to repay fees to the debtor.

For the reasons stated above and based upon the circumstances of this case, the court sanctions Mr. Burgess $1,000 pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9011(c). Mr. Burgess shall pay this sanction to the Clerk of the Bankruptcy Court on or before September 15, 2002.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
September 4, 2002

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

BNC

9/5/ 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE 1 UST

KAREN R. WEATHERS
Deputy Clerk