

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 99-11250-JMD  
Chapter 7Dennis Michael Drouin,  
Debtor*Mark Ford, Esq.*  
*FORD AND FORD, P.C.*  
*Attorney for Plaintiff**Geraldine Karonis, Esq.*  
*Attorney for J. Christopher Marshall, United States Trustee**Edmond Ford, Esq.*  
*Chapter 7 Trustee***MEMORANDUM OPINION****I. BACKGROUND**

On April 15, 1999, Dennis Michael Drouin (the “Debtor”) filed the above-captioned Chapter 7 bankruptcy case with this Court. The Debtor filed his petition on a pro se basis. The petition indicates that a bankruptcy petition preparer (“BPP”) prepared, for compensation, the petition and its accompanying statements and schedules. The name of the BPP is listed as “James E. Harris” and an Illinois address and phone number are provided. However, instead of providing a social security number for the BPP as indicated by the petition, the following was provided: “BPP does not participate in Social Security System.”

On June 15, 1999, the Debtor filed a Motion To Dismiss Pursuant To 11 U.S.C.

[§] 707(b) (the “Motion”), requesting that the Court dismiss his case. Attached to the Motion was an Affidavit Of Dennis Michael Drouin (the “Affidavit”). In essence, the Affidavit alleges that the Debtor sought assistance from a commercial bankruptcy Internet site in filing his petition<sup>1</sup> and indicated to a

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<sup>1</sup> A later hearing before this Court (discussed below) revealed that this site can be found at <[www.americanbankruptcy.com](http://www.americanbankruptcy.com)> and that it is connected with the person using the name “James E. Harris.”

representative of the Internet site that he was very concerned in retaining his interest in a house in Methuen, Massachusetts in which his handicapped daughter resides. The Affidavit alleges that the representative told the Debtor that the house could not be sold by a bankruptcy trustee. Satisfied with this response, the Debtor paid the Internet-based company \$99.00 for assisting him in filing the above-captioned case. After filing for bankruptcy, the Debtor learned that there was a possibility that the Chapter 7 trustee would seek a sale of the Methuen property and that the advice from the Internet-based company may have been erroneous. In an effort to avoid a sale, the Debtor filed the Motion. Troubled by the contents of the Motion and the Affidavit, this Court issued an order to show cause on September 17, 1999 (the "Order"). The Order directed, inter alia, that James E. Harris appear before the Court to show cause why he should not be fined not more than \$500.00 for his failure to include his social security number on the Debtor's bankruptcy petition, in violation of 11 U.S.C. § 110(c).<sup>2</sup> On October 18, 1999, J. Christopher Marshall, United States Trustee (the "UST"), filed a response to the Order (the "Response"). The Response alleges that the name "James E. Harris" is not the true identity of the BPP who assisted in the preparation of the Debtor's petition, but that his correct name is "Joseph E. Hager." The UST requests that this Court fine Joseph E. Hager, a.k.a. James E. Harris,<sup>3</sup> \$500.00 for his failure to provide his correct name on the Debtor's petition in accordance with § 110(b) in addition to a \$500.00 fine for his failure to provide his social security number. Moreover, the UST requests that this Court order Joseph E. Hager, a.k.a. James E. Harris, to refund the \$99.00 fee charged to the Debtor.

A hearing was held concerning the Order and the Motion on October 28, 1999, at which the Debtor, Debtor's newly retained counsel, and an attorney for the UST appeared. Neither Joseph E. Hager, a.k.a. James E. Harris, nor a representative of his company appeared. The Debtor provided testimony regarding the events leading up to his filing for bankruptcy. The content of the Debtor's testimony is

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<sup>2</sup> Unless otherwise noted, all section references hereinafter are to Title 11 of the United States Code.

<sup>3</sup> As discussed below, this Court finds that Joseph E. Hager, in a BPP capacity, signed the Debtor's petition as James E. Harris, which is not his legal or real name.

outlined below. The hearing was continued with respect to the Motion and the Court took the § 110 issue under advisement. This opinion concerns the § 110 issue exclusively.

The Court has jurisdiction of this subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

## **II. DISCUSSION**

### **A. Findings of Fact**

Upon consideration of the Motion, the Affidavit, the Response, a supplemental report filed by the UST on November 5, 1999, the Debtor’s testimony and representations made by the attorney for the UST at the October 28<sup>th</sup> hearing, and exhibits provided by the Debtor, the Court makes the following findings of fact:

- A. The Debtor sought the assistance of American Bankruptcy, doing business on a commercial Internet site at <[www.americanbankruptcy.com](http://www.americanbankruptcy.com)>, in filing the above-captioned bankruptcy case.
- B. Joseph E. Hager, a.k.a. James E. Harris, does business as American Bankruptcy.
- C. Joseph E. Hager, a.k.a. James E. Harris, is a BPP as defined by § 110(a).
- D. After contacting American Bankruptcy via the Internet, the Debtor received a packet in the mail, which included various forms and questionnaires to be filled out with a view towards filing for bankruptcy. The packet also included materials discussing various bankruptcy options.
- E. Before returning the forms and questionnaires received from American Bankruptcy, the Debtor contacted a representative of American Bankruptcy by telephone and inquired about the effect of bankruptcy on a house he partially owned in Methuen, Massachusetts. More specifically, the Debtor informed the representative that his handicapped daughter lived in the house and that he did not want to be forced to sell it. The representative told the Debtor that the house would not be sold as a result of a bankruptcy filing. The Debtor relied on this advice in filing his petition.
- F. The Debtor filled out the various forms and questionnaires and returned them to American Bankruptcy with a check for \$99.00. The Debtor then received various completed bankruptcy statements and schedules from American Bankruptcy reflecting the information he provided, which the Debtor filed with this Court on April 15, 1999.

- G. American Bankruptcy used the forms and questionnaires filled out by the Debtor to draft the statements and schedules needed by the Debtor to commence a bankruptcy case. Moreover, American Bankruptcy decided which statements and schedules were necessary for the Debtor to file the above-captioned bankruptcy case.
- H. Although the Debtor's Schedule A lists his interest in the Methuen property, his Schedule C does not provide any exemption for this interest. American Bankruptcy never provided the Debtor with any guidance regarding the possibility of exempting this interest.
- I. Joseph E. Hager, in a BPP capacity, signed the Debtor's petition as James E. Harris, which is not his legal or real name. The Court notes that it bases this finding on offers of proof made by the UST that the true identity of the BPP who prepared the Debtor's petition is Joseph E. Hager and not James E. Harris, and the failure of said BPP to offer any contrary evidence or appear at the October 28<sup>th</sup> hearing.
- J. Joseph E. Hager, a.k.a. James E. Harris, failed to provide his social security number on the Debtor's petition in his capacity as a BPP.
- K. Joseph E. Hager, a.k.a. James E. Harris, has been found to have violated § 110 in other federal districts, including the District of South Carolina and the Eastern District of Pennsylvania.
- L. The services provided to the Debtor by Joseph E. Hager, a.k.a. James E. Harris, d.b.a. American Bankruptcy, were without value and caused the Debtor certain harm insofar that he was given erroneous information regarding the effect of bankruptcy on his interest in the Methuen property and not appraised of the possibility that his interest in such property may be exempt in bankruptcy.

#### **B. Section 110 Violations**

Sections 110(c)(1) and (2) provide, in essence, that a BPP shall provide the social security number of each individual who prepared or assisted in the preparation of a bankruptcy petition. Section 110(c)(3) provides that a BPP who fails to comply with this requirement may be fined not more than \$500.00 for each such failure unless the failure is due to reasonable cause. Joseph E. Hager, a.k.a. James E. Harris, in his capacity as a BPP in connection with the Debtor's bankruptcy case, failed to provide his social security number. Given that there has been no showing that there was reasonable cause for such a failure, he is in direct violation of § 110(c). Accordingly, the Court finds that Joseph E. Hager, a.k.a. James E. Harris, should be fined \$500.00 for this violation.

In addition to fining Joseph E. Hager, a.k.a. James E. Harris, \$500.00 for his violation of § 110(c), the UST argues that he should be fined an additional \$500.00 for his alleged violation of § 110(b). Section

110(b)(1) provides that a BPP shall sign a filed petition and print his or her name and address. Pursuant to § 110(b)(2), a BPP may be fined not more than \$500.00 for failing to comply with § 110(b)(1), unless the failure is due to reasonable cause. Based upon offers of proof by the UST that James E. Harris is a fictitious name used by Joseph E. Hager as an alias, and supporting documentation provided by the UST showing that at least one other bankruptcy court has made such a finding,<sup>4</sup> this Court finds that Joseph E. Hager, a.k.a. James E. Harris, has violated § 110(b)(1) without reasonable cause. Accordingly, the Court concludes that he should be fined \$500.00 for this violation.

**C. Section 110(i)**

Section 110(i) provides, inter alia, that if a BPP is found to be in violation of § 110, a bankruptcy court shall certify that fact to the district court. Having found that Joseph E. Hager, a.k.a. James E. Harris, has violated both §§ 110(b) and (c) in his capacity as a BPP, the Court will certify this fact and the record in this matter to the district court in a separate order.

The Court notes that as a consequence of such certification, on motion of the Debtor, the trustee, or a creditor, the district court is empowered to order Joseph E. Hager, a.k.a. James E. Harris, to pay the Debtor: (1) the Debtor's actual damages; (2) the greater of \$2,000.00 or twice the amount paid by the Debtor to Joseph E. Hager, a.k.a. James E. Harris; and (3) reasonable attorneys' fees and costs in bringing a motion under § 110(i). See 11 U.S.C. § 110(i)(1). Moreover, if the trustee or a creditor moves in district court for damages on behalf of the Debtor under § 110(i), additional fines and costs may follow. See 11 U.S.C. § 110(i)(2) ("If the trustee or creditor moves for damages on behalf of the debtor . . . the [BPP] shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.").

The UST requests that this Court order Joseph E. Hager, a.k.a. James E. Harris, to refund the \$99.00 paid to him by the Debtor. Given that § 110(i) envisions such reimbursement as part of the damages

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<sup>4</sup> On June 30, 1999, Judge John E. Waites of the U.S. Bankruptcy Court for the District of South Carolina found, in a context very similar to the instant matter, that "[Joseph E. Hager] has used and continues to use the alias 'James E. Harris.'" See Ex. A to the Response.

and penalties “package” that may be recovered at the district court level, the Court concludes that such an order is better sought from the district court. Accordingly, the Court declines to grant this request.

### III. CONCLUSION

For the reasons stated above, the Court finds that Joseph E. Hager, a.k.a. James E. Harris, d.b.a. American Bankruptcy:

- A. Violated the provisions of § 110(b)(1) without reasonable cause and is hereby fined \$500.00 for such violation; and
- B. Violated the provisions of § 110(c)(1) and (c)(2) without reasonable cause and is hereby fined \$500.00 for such violation.

These fines shall be paid to the Clerk of this Court. This opinion constitutes the Court’s findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order in accordance with this opinion shall be entered.

DONE and ORDERED this 19<sup>th</sup> day of November, 1999, at Manchester, New Hampshire.

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J. Michael Deasy  
Bankruptcy Judge