

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

In re:

Bk. No. 00-12048-JMD  
Chapter 13Martin L. Heck,  
Debtor

**MEMORANDUM OPINION AND ORDER**

**I. BACKGROUND**

Michael M. Mills, Jr. d/b/a/ Alternative Assistance (“Mills”) prepared a skeleton Chapter 13 bankruptcy petition for Martin L. Heck (the “Debtor”). The Debtor filed the petition on July 13, 2000. The Debtor’s petition was not accompanied by a statement of disclosure of Mills’ fees, and Mills did not file such disclosure with the Court within ten days of the Debtor’s filing as required by 11 U.S.C. § 110(h)(1). As indicated below, Mills did not file his disclosure until September 1, 2000, after the United States Trustee (“UST”) filed a motion seeking disgorgement and sanctions.

On August 7, 2000, the Debtor filed a motion seeking the voluntary dismissal of his case, which motion was granted by the Court on August 9, 2000. Two days later, on August 11, 2000, the UST contacted Mills regarding his failure to disclose his compensation as required by 11 U.S.C. § 110(h)(1). Mills indicated to the UST that he had received approximately \$275 from the Debtor for preparing the petition and that he was unaware of any requirement that he disclose his compensation to the Court under these circumstances.

On August 14, 2000, the UST filed a motion seeking, first, the disgorgement of some or all of Mills’ fees on the grounds that his fees exceeded the value of his services and, second, the disgorgement of all fees for failure to disclose them. In addition, the UST requested that the Court issue additional sanctions against Mills for failure to comply with the petition preparer statute.

On September 1, 2000, Mills filed a statement disclosing that he received \$295 for preparing the Debtor’s skeleton petition. On September 6, 2000, the Court held a preliminary hearing on the UST’s

motion. The Court held a further hearing on November 2, 2000, which hearing had been consolidated with a hearing on motions seeking the determination of a reasonable fee for petition preparers that were filed in ten other bankruptcy cases by the UST. The parties presented evidence at the hearing, and all matters were taken under advisement.

This Court has jurisdiction of the 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**

The Bankruptcy Code contains a specific provision dealing with compensation of petition preparers. Section 110(h) specifically provides:

(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

11 U.S.C. § 110(h).

It is clear that Mills failed to comply with section 110(h)(1) since he did not file his disclosure within ten days after the date of the filing of the Debtor’s petition but rather he filed it on the fiftieth day following the Debtor’s filing. In addition, it is also clear that the fee of \$295 charged by Mills exceeded the value of the services he provided. Mills testified that the Debtor came to his office one evening seeking to file a

bankruptcy petition in order to avoid a foreclosure. Mills then prepared the skeleton petition and the Debtor picked up the completed document the next morning. Although Mills did not testify as to the length of time he spent meeting with the Debtor and preparing the skeleton petition, the evidence suggests that it should have taken Mills no longer than two hours to meet with the Debtor and to prepare his skeleton petition. The Court has ruled in a separate opinion issued this date that \$30 per hour is a reasonable fee for such services. Accordingly, any fees in excess of \$60 would exceed the value of the services rendered for the documents prepared. Pursuant to 11 U.S.C. § 110(h)(2), Mills shall immediately turnover excess fees in the amount of \$235 to the Chapter 13 Trustee, Lawrence P. Sumski, 294 Route 101, Unit 7, Amherst, New Hampshire. Since the case was dismissed on a motion filed by the Debtor on August 7, 2000 (Doc. No. 5), the Chapter 13 Trustee may refund the money to the Debtor.

The UST has also requested that sanctions be imposed for Mills' failure to timely file the disclosure required by 11 U.S.C. § 110(h)(1). After an examination of section 110, the Court finds that violations of the requirements of subsections (b) through (g) are punishable by a fine of not more than \$500 for each such violation pursuant to an order of this Court. However, under subsection (h) a fine may be imposed by this Court only for the failure of a petition preparer to comply with a court order to turnover excess fees within thirty days of service of such court order. See 11 U.S.C. 110(h)(4). No fine may be imposed for failure to timely file the disclosure required by section 110(h)(1).<sup>1</sup> The only method for the UST to pursue sanctions would be for this Court to certify a violation of section 110 to the district court pursuant to section 110(i)(1). Section 110(i)(1) appears to have been included in the statute in order to provide a method for injured parties, most often the debtor, to recover damages for unfair, deceptive, fraudulent and negligent actions by petition preparers. In this case the Debtor has not responded to the UST's motion or participated

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<sup>1</sup> If a petition preparer violates any provision of section 110, the Court may certify such fact to the district court under section 110(i)(1). Thereafter, upon motion of the debtor, the trustee or a creditor, the district court may award the debtor's actual damages, the greater of \$2,000 or the amount paid for the petition preparer's services, and reasonable attorneys' fees and costs.

in the hearings. Accordingly, if the UST wishes to pursue any such damage claims, he shall file a motion requesting such certification within ten days from the date of this Memorandum Opinion and Order.

### **III. ORDER**

For the reasons outlined above, it is hereby ORDERED, ADJUDGED and DECREED:

1. Mills fees over \$60 are in excess of the value of the services provided to the Debtor in the preparation of the skeleton petition filed in this proceeding.
2. Mills shall immediately turnover \$235 to the Chapter 13 Trustee.
3. The Chapter 13 Trustee may refund the \$235 to the Debtor in this dismissed case or file such other motion regarding the disposition of such funds as he is advised.
4. The UST may by motion request this Court to certify a violation of section 110 to the district court pursuant to section 110(i)(1) within ten days from the date of this Memorandum Opinion and Order.
5. No other sanction will be issued by this Court.

This Memorandum Opinion and Order constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DONE and ORDERED this 28<sup>th</sup> day of November, 2000, at Manchester, New Hampshire.

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J. Michael Deasy  
Bankruptcy Judge