

Bankruptcy Petition Preparers & Unauthorized Practice of Law

Southern District of Texas Bankruptcy Bench Bar Conference
June 18, 2014

HECTOR DURAN, U.S. TRUSTEE'S OFFICE

DINORAH GONZALEZ, OFFICE OF DAVID G. PEAKE

CRISTINA RODRIGUEZ, KEELING LAW FIRM



11 USC § 110

§ 110 was designed to protect consumers from abuses by non-attorneys.

Its purpose is to prevent petition preparers from “taking unfair advantage of persons who are ignorant of their rights both inside and outside of the bankruptcy system.”

Who is a BPP?

A bankruptcy petition preparer is “A PERSON”

- Any individual who is not an employee of the debtor’s attorney under direct supervision of that attorney & prepares for compensation a document for filing
- A Corporation – because the general definition of “person” includes corporations 11 USC § 101(41), corporations can be considered petition preparers
- For fee software providers – 9th circuit has held that a software that helps customers complete bankruptcy petitions and schedules was materially indistinguishable from corporations that do the same.

Frankfort Digital Servs. v. Kistler, 477 F. 3d 1117 (9th Cir. 2006).

“Document for Filing”

A “petition of any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a cause under this title.”

Note that the document need not be filed, just prepared for filing

11 USC § 110 (a)(2)

Disclosure of Identity Required

- BPP must sign the document, and print on it BPP's name and address
- BPP must place on the document a full SSN for the individual who prepared the document or assisted in its preparation
- Entities that are not individual must use the name, address and SSN of an office, principal, responsible person or partner of the entity

11 USC §110(b), (c)

Documents Must be Given to the Debtor

- Before accepting any fees, BPP must provide debtor a notice, in simple language, that BPP is not an attorney and may not practice law or give legal advice
- Before or at the time debtor signs, BOO must furnish debtor with copies of the documents to be filed

11 USC §110(b)(2), (d)

And the Debtor Must Sign Them...

- A BPP “shall not execute any document on behalf of a debtor”

11 USC §110(e)(1)

Fees

- BPP must file a declaration disclosing any fee received in the 12 months before the filing, and any unpaid fee charged to the debtor
- No receipt of court filing fees
- No excessive fees. *See* local guidelines, local precedent.

11 USC §110(g), (h)

A BPP May Not Offer Legal Advice

- § 110 expressly prohibits BPPS from offering legal advice
- § 110 (e)(2)(B) provides examples:
 - includes advising the debtor whether to file a petition under this title; or
 - if commencing a case under chapter 7, 11, 12, or 13 is appropriate;
 - whether the debtor's debts will be discharged in a case under this title;
 - whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;
 - whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
 - concerning how to characterize the nature of the debtor's interests in property or the debtor's debts;
 - concerning bankruptcy procedures and rights.
- List is not exclusive

11 UCS § 110 (e)(2)

Remedies for Failure to Comply with 11 UCS § 110

- Disgorgement – if amount paid exceeds value of services provided, or BPP failed to comply with § 110 (b) through (g)
- Damages – actual damages & for the commission of “any act the court finds to be fraudulent, unfair or deceptive”
- Fines – \$500.00 for each time a BPP fails to comply with any provision in § 110 (b) through (h)
- Injunctive Relief – for specific conduct under § 110 (j)(2)(A), or from acting as a BPP under § 110 (j)(2)(B)

Damages debtors can seek

(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor—**(A)** the debtor's actual damages;

(B) the greater of—**(i)** \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys' fees and costs incurred.

11 UCS § 110 (e)(2)

What to look for from a debtor

Amount of arrears owed on their home

Look for programs targeting minorities or non-English speakers

Ask them if they have hired any other person/firm/company to help them with their debts or mortgage

Make sure to ask:

- 1) Has anyone helped you save your home? File for a loan modification?
- 2) How much did you pay them? When?
- 3) Do you have any of the paperwork they gave you?
- 4) Can you provide any receipts or proof of payments made to them?

Ask the debtor to write down a timeline with names and many detail as they can remember

IFA Home Funding et al,
v.
Juan Castano

10-00304



IFA Home Funding

- Offered customers loan modification services for a fee
- Let customers believe they were working with licensed attorneys
- If the loan modification failed, they would counsel customers on bankruptcy options
- Prepared the petition and other bankruptcy paperwork to stop foreclosure
- Charged additional fees for bankruptcy work
- Advised debtors on bankruptcy process, attended the meeting of creditors as “friend of debtor” or “translator”



IFA Home Funding
Mortgage Co.

JUAN J CASTANO

CEO/ Founder

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Houston, TX 77092

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**If your house has already been foreclosed on,
it's not too late, we can still help with a
"Reverse Foreclosure" option.**

We can modify your mortgage loan,

- If you are behind on your mortgage payment
- If your income has been reduced
- If you have a loan with an adjustable rate
- If your credit score is very low and do not qualify for a refinancing
- If you are currently using credit to make your mortgage payment
- If you have a financial hardship

***We can help you get a fresh start on your loan with
a more affordable payment,***

- You can have a substantial reduction on your interest rate
- A noticeable reduction on your monthly mortgage payment

**Some restrictions apply*

Show Cause Order

- Failing to perform any service the agency said it would perform (11 USC § 526(a)(1))
- Misrepresenting the services the agency is to provide of the benefits and risks of filing for bankruptcy (11 USC § 526(a)(3))
- Failing to make required disclosures under 11 USC § 527
- Failing to execute and provide a written contract (11 USC § 528(a)(1)-(2))
- Failing to make required disclosures in advertisements (11 USC § 528(a)(3)-(b))
- Failing to provide the preparer's own social security number to disclose fees (11 USC § 110)
- Failing to provide notice to the debtor “that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice” (11 USC § 110(b)(2)(B)(i))

Findings, Sanctions, and Damages

- IFA Home Funding was running a unitary business attempting to restructure home mortgage loans, then if it failed, placing individuals in chapter 13 bankruptcy
- Ordered to refund fees for both loan modifications and bankruptcies filed
- Fined \$900.00 for violations of 11 USC § §110, 526, and 528

Walter Pineda et al,
v.
Harold W. Higgins

12-03391

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Joy Consulting Group

- In the business of negotiating solutions for foreclosure, including but not limited to mortgage forbearance agreements, mortgage loan reinstatements, mortgage loan modifications, short sales, and principal and interest reductions
- Specifically targeted minorities and Spanish speakers
- Would refer debtors to a lawyer if they had eviction proceedings
- Provided debtors with documents necessary to file a chapter 13 bankruptcy for an additional fee

SAVE YOUR HOME!!! STOP FORECLOSURE NOW!!!



JOY CONSULTING GROUP

ONE ARENA PLACE
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HOUSTON, TEXAS 77074

"LIVE TESTIMONIES AVAILABLE"

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SERVICES PROVIDED

- LOAN MODIFICATION ASSISTANCE
- FORECLOSURE ASSISTANCE
- FINANCING AVAILABLE FOR QUALIFIED PROPERTIES
- RELOCATION ASSISTANCE AVAILABLE
- **PROPERTY FORECLOSED...DON'T MOVE OUT UNDER ANY CIRCUMSTANCE. WE CAN HELP YOU GET AN ADDITIONAL 6 MTHS TO YEAR IN YOUR HOME.**
- WE WILL ACCOMPANY YOU TO JP COURT


DON'T DELAY....CALL TODAY!

REFERRED BY _____

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Post card advertisement from Joy Consulting Group

Violations under 11 USC § 110, 526, 527, & 528

- Failed to include signatures and information required on the petition and other bankruptcy documents
 - Failed to provide a written contract with terms and disclosures as required under
 - Failed to provide proper notices and disclosures required under
 - Intentional violation and clear and consistent pattern or practice of violating 11 USC §526 by misrepresenting services provided and providing legal advice without a license
- 

Outcome

- Harold Higgins entered into an agreed judgment
 - enjoining himself and any member of his staff from collecting any money from any kind of bankruptcy related work and
 - refunding \$11,000.00 in fees collected
 - paying \$5,000.00 in statutory damages
- After evidence was entered demonstrating Mr. Higgins violated the terms of the agreed judgment, he entered into another agreed order assessing monetary sanctions against defendants
- Ordered to disgorge an additional \$9,150.00 in fees collected