

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF )  
 )  
TERRY W MOORE, ) CASE NO. 11-32896 HCD  
 ) CHAPTER 7  
 )  
DEBTOR. )

Appearances:

Ellen L. Triebold, Esq., Office of the United States Trustee, One Michiana Square, Suite 555, 100 East Wayne Street, South Bend, Indiana 46601; and

Tery W Moore, pro se, 16051 County Road 108, Bristol, Indiana 46507.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 4, 2013.

Before the court is the “United States Trustee’s Motion to Determine Violations of Section 110 Against Richard Kuhns, Dennis Miller, and/or Vanguard Properties, LLC and Award Damages to the Debtor” (“Motion”), filed by the United States Trustee Nancy Gargula (“U.S. Trustee”), in the reopened bankruptcy case of Tery W Moore (“Mr. Moore” or “debtor”). This Motion was heard together with the U.S. Trustee’s “Complaint to Determine Violations of 11 U.S.C. § 110 And/Or Abuse of the Bankruptcy Process, Impose Fines and Sanctions, and Obtain Injunctive Relief,” commencing an adversary proceeding in the bankruptcy case of Ernest Bowyer, Jr. (Case No. 11-31568, Adversary Proceeding No. 11-3043), and the U.S. Trustee’s “Motion to Determine Violations of Section 110 Against Richard Kuhns, Dennis Miller, and/or Vanguard Properties, LLC and Award Damages to the Debtor” in the bankruptcy case of Scott Nelson (Case No. 11-31008). A joint hearing was held for the purpose of consolidating the evidentiary presentation, arguments, and briefing of the parties. Companion decisions in each of the three cases have been rendered and judgments have been entered for the U.S. Trustee in each case on this date. The central opinion, issued in the adversary proceeding of Ernest Bowyer, Jr., *see* [R. 80](#), presents a detailed record of the conduct of

Richard Kuhns, Dennis Miller, and Vanguard Properties LLC toward five debtors and holds that Richard Kuhns, Dennis Miller, and Vanguard Properties LLC jointly and severally violated 11 U.S.C. § 110. The companion decisions rendered in the Moore and Nelson cases reflect the § 110 violations committed by Richard Kuhns, Dennis Miller, and Vanguard Properties LLC on those two individual debtors.

For the reasons set forth below, the court grants the U.S. Trustee's Motion and approves the requests for damages and fines.<sup>1</sup>

### BACKGROUND

Richard Kuhns, Dennis Miller, and Vanguard Properties LLC are non-attorney bankruptcy petition preparers ("BPPs") who prepared or assisted in the preparation of the bankruptcy petitions of this debtor, Tery W Moore, and of at least four other debtors: Ernest Bowyer, Jr. (Case No. 11-31568), Scott Nelson (Case No. 11-31008), Jason Brown (Case No. 11-31589), and Kyle Brendon Pestow (Case No. 11-31590). Because the facts underlying each case were similar and the violations and requested relief related to the same course of conduct by the BPPs acting together, the court held the evidentiary hearing and considered the cases together, reviewing the BPPs' conduct toward each debtor.

Richard Kuhns, Dennis Miller, and Vanguard Properties LLC participated throughout the adversary proceeding and evidentiary hearing.<sup>2</sup> At the conclusion of the evidentiary hearing, counsel for the U.S. Trustee summarized the requests for damages, fines, sanctions, and injunctive relief in the adversary proceeding of Mr. Bowyer and for damages and fines in the bankruptcy cases of Mr. Nelson and Mr. Moore. Dennis Miller and Richard Kuhns made closing statements, as well; they asserted that counsel for the U.S.

---

<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

<sup>2</sup> The motions, affidavits, and responses of the BPPs are described in the court's Memorandum of Decision of this date issued in the adversary proceeding of Ernest Bowyer, Jr. (Adv. Proc, No. 11-3043), hyperlinked above. In addition, the failure of the BPPs to respond to the U.S. Trustee's motions is documented therein and need not be reiterated.

Trustee used “false grammar” and failed to communicate with syntactical or grammatical propriety. However, in none of the proceedings did Richard Kuhns, Dennis Miller, or Vanguard Properties LLC contest the allegations of the U.S. Trustee. There was no challenge to the U.S. Trustee’s Motions or Complaint. The court entered defaults and judgments by default against the three BPPs in the Bowyer case, without response from the three BPPs. No objections were raised to the testimony and evidence presented at the evidentiary hearing. Based on those unchallenged facts, therefore, the court made the following findings of fact concerning the BPPs’ conduct and relationship with Mr. Moore.<sup>3</sup>

In his testimony at the evidentiary hearing, Mr. Moore stated that he is a semi-truck driver who owns his residence in Bristol, Indiana, where he lives with his wife. He testified that, in 2011, their home was in foreclosure and facing a sheriff’s sale. Mr. Moore, who was raised in an Amish household, learned of Richard Kuhns, an Amish man in his community, who claimed to have a program to save homes from foreclosure.

Richard Kuhns and Larry first met with Mr. Moore at a coffee shop in Nappanee, and later came to the Moores’ home to explain the program they offered.<sup>4</sup> Richard Kuhns, Larry, Dennis Miller, and their company Vanguard Properties LLC offered the program. Richard Kuhns reminded Mr. Moore that the Scriptures provided forgiveness of debt after seven years, and told the Moores that they too could own their home debt-free by making monthly payments to the BPPs for seven years. Mr. Moore and his wife were instructed to make three initial monthly payments of \$1,000 and then to make monthly payments of \$800 for seven years. If the program did not work, the Moores were promised that they would get a refund of all but the initial \$1,000 payments. It was a multi-step program, Richard Kuhn said, requiring the filing of various documents to stop the sheriff’s sale and to challenge the mortgage. Mr. Moore testified that he

---

<sup>3</sup> Mr. Moore’s voluntary chapter 7 petition was filed on July 22, 2011. On September 8, 2011, the case was dismissed for failure to pay a filing fee, and it was closed on September 29, 2011. It was reopened on June 7, 2012, upon the motion of the U.S. Trustee.

<sup>4</sup> The U.S. Trustee did not discover Larry’s last name. He was not named as a defendant.

trusted and believed this Amish man and his partners. For that reason, he and his wife made the first five payments under the plan totaling \$4,600. (Pl. Ex. 5.)<sup>5</sup>

A few days before the sheriff's sale was scheduled, on July 22, 2011, Dennis Miller and Larry drove Mr. Moore to the public library in downtown South Bend, Indiana. Using the library's computer, they asked him questions and filled in the bankruptcy forms. However, Dennis Miller and Larry did not fill in the forms accurately or completely. For example, Schedule B was supposed to list Mr. Moore's personal property. Dennis Miller checked off the box for "NONE" in every category of personal property, even though Mr. Moore testified that he had a 1990 Dodge Pickup, clothes, a recliner, and an interest in his corporate trucking business. *See* Pl. Exs. 1, 23. He explained that he and his wife had formed a corporation named TCM Specialized, LLC, but it was not listed on the forms. The BPPs also did not list their own names, addresses, social security numbers, or the business number for Vanguard Properties LLC as bankruptcy petition preparers in the bankruptcy documents. *See* Pl. Exs. 1, 2. In addition, they did not disclose the compensation they received. Mr. Moore testified that the BPPs told him they were not attorneys, but they did not give Mr. Moore a written notice explaining that they were not attorneys and that they could not give legal advice.

Mr. Moore, Dennis Miller, and Larry went from the library to the Bankruptcy Clerk's Office and filed Mr. Moore's bankruptcy case, including an Application to Waive the Filing Fee. *See* Pl. Exs. 1, 2. The BPPs told Mr. Moore that "what he needed" was a chapter 7 bankruptcy. He testified that he did not want to file bankruptcy. However, they told him not to worry, because he wasn't really filing bankruptcy: It was a "false" bankruptcy case, they said, and he did not need to show up for any of the hearings.<sup>6</sup> They explained that it was just meant to stop the sheriff's sale. They advised him that he could file up to three bankruptcy

---

<sup>5</sup> The court's reference to "Pl. Ex. \_" designates exhibits proffered by the U.S. Trustee at the evidentiary hearing and admitted in evidence without objection.

<sup>6</sup> In his Affidavit, Mr. Moore stated that the BPPs advised him that they could help him file "a 'blank bankruptcy' case to stop the foreclosure of my home, that filing a 'blank bankruptcy' case was legal, and that I should not show up for the court date so that it would be dismissed." Pl. Ex. 6, ¶ 9.

cases before the Judge “frowned on it.” Mr. Moore said that he relied on their representations. The BPPs also provided Mr. Moore the documents relating to his real estate to file in the Elkhart County Recorder’s Office. *See* Pl. Exs. 3, 4. Mr. Moore commented that he did not prepare them and that his name “Tery” was misspelled “Terry” on the Notice of Lis Pendens. *See* Pl. Ex. 4.

Mr. Moore testified that, after making five months of payments totaling \$4,600, he and his wife stopped making payments under the BPPs’ program. At some point, he said, God heard their prayers. Mr. Moore called the mortgage company and negotiated a reduced payoff amount. With the help of his father-in-law and by God’s grace, he told the court, he and his wife paid off the mortgage. When Mr. Moore asked the BPPs to refund the payments made to them, however, he never received one. The court found Mr. Moore to be an honest, credible, and sincere witness, and found it noteworthy that the BPPs did not question or cross-examine him.

After Mr. Moore received a letter from the U.S. Trustee, he called Dennis Miller to find out what to do. Dennis Miller told him that he would prefer that Mr. Moore not contact the U.S. Trustee about their dealings. However, Mr. Moore did contact the U.S. Trustee. Despite everything, his bankruptcy case was dismissed on September 8, 2011, for failure to pay the filing fee, and was closed on September 20, 2011. Nevertheless, on June 7, 2012, upon the U.S. Trustee’s motion to reopen Mr. Moore’s case, the court reopened the case to accord relief to the debtor under § 350(b).

At the hearing, Mr. Moore presented testimony and introduced documents, all without challenge from the BPPs, which demonstrated that Richard Kuhns, Dennis Miller, and Vanguard Properties LLC were non-attorney “bankruptcy petition preparers” under § 110(a) who prepared the bankruptcy documents for filing in his case and who received compensation for their services. He testified that the BPPs filed the debtor’s petition, Exhibit D, schedules, statement of financial affairs, statement of intention, creditor matrix, chapter 7 statement of current monthly income and means-test calculation, and application for waiver of the chapter 7 filing fee. They also prepared and filed documents in state court. Mr. Moore told the court that

he was not physically harmed by the BPPs but that they took advantage of him, causing him to suffer stress. He was very disappointed that another Amish man would do such a disgusting thing, he said. Because Mr. Moore had agreed to testify about his dealings with the BPPs, he drove his semi-trailer truck 1,500 miles from Texas to be in the courtroom, spending \$1,098.47 on fuel and forgoing sleep and the opportunity to haul a load back and to earn money. He presented receipts to validate his actual damages. *See* Pl. Ex. 35.

The Senior Bankruptcy Analyst in the office of the U.S. Trustee, Dianne Froehlke, testified as an expert witness. She reviewed the bankruptcy petitions of each debtor for completeness and accuracy. Ms. Froehlke reviewed the documents of Tery Moore and determined that there were 11 inaccuracies. For example, the required information concerning the non-attorney petition preparer was left blank throughout the bankruptcy documents. In addition, there was no “personal property” listed on the Summary of Schedules, and Schedule B affirmatively stated that Mr. Moore had “NONE” of the listed items. Contradictorily, Schedule B listed “NONE” for wearing apparel, but Schedule J stated that the debtor spent \$60 per month on clothing. Ms. Froehlke also pointed out that Schedule I stated that the debtor was self-employed but that the Statement of Financial Affairs listed no business claimed by the debtor. She noted that Schedule B stated “NONE” for automobiles and vehicles but that Schedule J listed \$100 a month in payment for auto insurance. It was noteworthy, as well, that the BPP neither signed the Declaration concerning Debtor’s Schedules nor provided his social security number. Although Schedule I listed the debtor as self-employed, the Statement of Financial Affairs indicated that the debtor had no income from employment, from operation of business, or from other source, during the two years prior to filing bankruptcy. As a last example, the Statement of Financial Affairs marked “NONE” for payments made to debt counselors or petition preparers. However, Mr. Moore testified in court, with copies of the checks as exhibits, that he made payments of \$4,600 to the BPPs. It was clear from Ms. Froehlke’s testimony that Mr. Moore’s bankruptcy documents were incomplete, inaccurate, and deceptive or fraudulent.

## DISCUSSION

The U.S. Trustee requests a finding that Richard Kuhns, Dennis Miller, and Vanguard Properties LLC are “bankruptcy petition preparers” under 11 U.S.C. § 110(a) who violated § 110 and committed acts that are fraudulent, unfair, or deceptive against this debtor. The court examined the documents, listened to the testimony of the witnesses, and weighed the arguments of the parties concerning whether the BPPs repeatedly violated § 110 and engaged in fraudulent, unfair or deceptive conduct in each case. In the central opinion, the court reviewed the subsections of § 110, “Penalty for persons, who negligently or fraudulently prepare bankruptcy petitions,” set forth the legal analyses of each subsection, and concluded that the BPPs Richard Kuhns, Dennis Miller, and Vanguard Properties LLC violated § 110(b)(1), (b)(2), (c), (d), (e)(1), and (e)(2) in their actions with regard to some or all of the debtors.<sup>7</sup>

In this bankruptcy case of Tery W Moore, the court has found that Richard Kuhns, Dennis Miller, and Vanguard Properties LLC, jointly and severally acting as bankruptcy petition preparers, had failed to comply with subsections (b)(1), (b)(2), (c), and (e)(2)(B) of § 110. The BPPs failed to sign and print their names and addresses on the documents, in violation of § 110(b)(1). They failed to provide to the debtor and to file written notice before preparing any document for filing or accepting any fees, in violation of § 110(b)(2). They failed to provide their social security numbers or other identifying number on documents for filing, in violation of § 110(c). And they provided legal advice to the debtor, in violation of § 110(e)(2)(B). For example, they gave Mr. Moore advice concerning bankruptcy procedures and rights, whether to file a bankruptcy petition, whether commencing a bankruptcy case was appropriate, and whether the debtor would be able to retain a home after commencing a case. The court determines that the BPPs Richard Kuhns, Dennis Miller, and Vanguard Properties LLC are bankruptcy petition preparers under § 110(a) who violated § 110(b)(1), (b)(2), (c), and (e)(2)(B).

---

<sup>7</sup> The central opinion in this matter was issued in the bankruptcy case of Ernest Bowyer, Case Number 11-31568, Adversary Proceeding Number 11-3043, [R. 80](#).

Under § 110(l)(1), BPPs who fail to comply with § 110(b), (c), (d), or (e) may be fined up to \$500 for each such failure. Even though the BPPs had violated those subsections, the U.S. Trustee (quite generously) did not request those fines in this case. and the court in its discretion will not impose them. However, she did request that damages be paid to the debtor Mr. Moore. Under § 110(i)(1), BPPs who violate § 110 or commit any act that the court finds to be fraudulent, unfair, or deceptive are required to pay the debtor actual damages, either \$2,000.00 or twice the amount paid by the debtor to the BPPs for their services (whichever is greater), and reasonable attorneys' fees and costs. The court finds that the BPPs violated § 110 in Mr. Moore's case and committed fraudulent, unfair, or deceptive acts. It concludes that the BPPs are jointly and severally liable to the debtor for actual damages of \$1,098.47. *See* § 110(i)(1)(A). They also are jointly and severally liable to the debtor for statutory damages in the amount of \$9,200.00, which is twice the \$4,600.00 paid by the debtor to the BPPs. *See* § 110(i)(1)(B). In addition, because the U.S. Trustee moved for damages on behalf of the debtor, the court is required to order the BPPs to pay to the U.S. Trustee the additional amount of \$1,000.00 plus reasonable attorneys' fees and costs incurred. *See* § 110(i)(2).

#### CONCLUSION

Accordingly, the court finds that Richard Kuhns, Dennis Miller, and Vanguard Properties LLC are bankruptcy petition preparers under 11 U.S.C. § 110(a) who violated § 110(b)(1), § 110(b)(2), § 110(c), and § 110(e)(2) of the Bankruptcy Code, and who committed fraudulent, unfair, or deceptive acts warranting damages under § 110(i). It further finds that Richard Kuhns, Dennis Miller, and Vanguard Properties LLC are jointly and severally liable to the debtor Tery W Moore in the amount of actual damages of \$1,098.47 under § 110(i)(1)(A) and statutory damages of \$9,200.00 under § 110(i)(1)(B). The court awards the U.S. Trustee \$1,000.00 and reasonable attorneys' fees and costs, if any, under § 110(i)(2), as well.

Richard Kuhns, Dennis Miller, and Vanguard Properties LLC are ordered to make full payment of these damages and fines by certified check or money order, and to provide proof of those payments to the U.S. Trustee and to this Bankruptcy Court, within thirty (30) days of the date of this Decision and Judgment.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT