

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN THE MATTER OF
PHILIP E. PARKER.

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§ MISC. PROCEEDING NO. 02-302
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MEMORANDUM OPINION AND ORDER

By order to show cause entered October 3, 2002, the court ordered that Philip E. Parker and J. E. Davis appear on November 1, 2002, to explain their conduct in three bankruptcy cases, In re Johnson, 01-80309-BJH-13; In re Washington, 02-36833-RCM-13; and In re Ford, 02-36831-SAF-13. The court issued that order upon the motion of Thomas D. Powers, the Standing Chapter 13 Trustee. The court conducted a hearing on the order to show cause on November 1, 2002, and December 6, 2002.

By order entered July 19, 2002, the court directed that the clerk of this court not accept for filing any paper or pleading from Parker acting as an attorney in a case under Chapter 13 of the Bankruptcy Code without further order of this court. The court provided that Parker could file a motion for relief from the order upon completion of a CLE course on consumer bankruptcy law. The trustee contends that Parker violated this order.

In addition, the trustee contends that Davis engaged in the unauthorized practice of law and violated 11 U.S.C. § 110 regarding bankruptcy petition preparers. Parker employed Davis, with Davis' work for Parker varying from 15 to 40 hours per week. Davis prepared bankruptcy petitions for Parker. Parker claims that Davis did not work for him after July 31, 2002, but Davis worked on at least two Parker matters following that date, as discussed below. Parker closed his office in April or May 2002, and moved his practice into his home. Davis then moved her work into her home.

Parker represented Elouise Johnson in her bankruptcy case, case no. 01-80309-BJH-13. Parker never personally met with Johnson. He testified that he only spoke to her on the phone. But Davis met with Johnson at her home. Davis conceded that she advised Johnson to file a petition for relief under Chapter 13. Johnson was sick and having problems making home mortgage payments.

Parker drafted a document for Johnson styled "Power of Attorney," authorizing Parker to administer her assets, including her home, and to sign her name to documents. The document further states "This Power of Attorney carries with it my Last Will and Wishes on the property listed above in the case of my untimely death during this time." The document names Parker as the executor. The document then states that "the addendum is

valid with or without my signature." Johnson purportedly signed the document on December 1, 2001. Davis obtained Johnson's signature on the document at Johnson's home. Parker could not explain what the document meant. As a lawyer, he could not explain why he wrote its provisions as he did. Instead, Parker testified that he wrote the document only because Johnson asked him to write it. He testified that it was neither effective as a will or as a power of attorney. Yet, Parker, as Johnson's lawyer, acknowledged that he wrote the document and intended to use the document.

Parker filed the Johnson bankruptcy petition on December 4, 2001. Parker testified that he filed the petition to stay a foreclosure of Johnson's house. Parker testified that Johnson did not pay him a fee. The court dismissed the Johnson case by order entered January 23, 2002.

On June 27, 2002, the court received a letter from Johnson stating that she never met Parker and never hired him to represent her. Parker testified that Johnson was not correct. But Parker conceded that he and Johnson never met in person. While Parker contests Johnson's assertion that she did not retain Parker as her attorney, Parker concedes that he drafted an invalid document purporting to be a power of attorney vesting him with control over Johnson's assets and possibly over her estate. While he drafted the document, he says at her request, he never

met in person with Johnson and had Davis obtain Johnson's signature at Johnson's house while Johnson was ill. The situation has the appearance of abuse and exploitation by an attorney over a client. While asserting an effort to help Johnson, Parker attempted or appeared to attempt to gain an improper degree of control over her and her affairs.

Parker's actions in the Johnson matter compel that he obtain further ethical training and education before he be allowed to practice before this court.

Parker initially represented Valentina Washington. He met with Washington at Davis' home because he had closed his office. Davis obtained Washington's information for her schedules and statement of financial affairs. Parker prepared those documents. After July 19, 2002, Parker attempted to file a bankruptcy petition for Washington but the clerk of court refused to accept the petition because of the court's order entered July 19, 2002. Parker testified that until then he did not know of the court's order. He testified that he had not been timely receiving his mail. But he conceded that he had learned of the court's order by July 30, 2002.

After the clerk refused to accept the Washington petition, Davis prepared a second petition with schedules and statement of financial affairs for Washington. Davis then had Washington file her petition pro se. Washington filed her petition on August 6,

2002. Under the Bankruptcy Code, a "bankruptcy petition preparer" means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing. 11 U.S.C. § 110(a)(1). Davis testified that Washington did not pay her a fee for preparing the petition. But Davis certified on the petition that she prepared the document for compensation as a bankruptcy petition preparer as defined by § 110. Washington had previously paid Parker a fee, and Parker employed Davis. If Davis worked on the petition as Parker's employee, then Davis acted to circumvent the court's order of July 19, 2002. If Davis acted on her own, she certified that she acted as a bankruptcy petition preparer for compensation. If she neither acted as Parker's employee nor as a preparer, then she engaged in the unauthorized practice of law.

After the enactment of § 110, the only service that a bankruptcy petition preparer can safely offer and complete on behalf of a pro se debtor is the "transcription" of dictated or handwritten notes prepared by the debtor prior to the debtor having sought the petition preparer's services. Any other service provided on behalf of the debtor by a non-attorney (even telling the debtor where the information goes on the form) is not permitted under state unauthorized practice of law statutes and is, consequently, not authorized by § 110. In re Gutierrez, 248 B.R. 287, 298 (Bankr. W.D. Tex. 2000).

Jimmy Ford retained Parker to file a bankruptcy petition. Again, however, the clerk of court refused to accept the petition prepared by Parker. Like the Washington case, Parker contends that he prepared the Ford case before he learned of the court's order entered July 19, 2002. Parker testified that he returned the fee paid by Ford.

Davis then prepared a second Ford petition. Ford executed a power of attorney for Davis to sign the petition on Ford's behalf. Neither Davis nor Parker, for that matter, recognized that only the debtor could sign the petition. After reviewing the petition at the hearing, Davis testified that she did not actually sign Ford's name. Rather, she testified that Sharon Searles signed the petition. Searles referred Ford to Davis and Parker. Davis and Parker conferred with Ford by telephone conversation. Ford faxed the power of attorney to Davis. Davis filed the petition. On the petition, Davis certified that she prepared the document for compensation as a bankruptcy petition preparer as defined by § 110. Although the petition directs that other persons who assisted in the preparation be identified, Davis did not identify Searles, even though Davis testified that Searles signed the petition for Ford.

As with Washington, if Davis worked on the petition as Parker's employee, then Davis acted to circumvent the court's order of July 19, 2002. Davis certified that she acted as a

bankruptcy petition preparer for compensation. If she neither acted as Parker's employee nor as a bankruptcy petition preparer, then she engaged in the practice of law. Furthermore, either she signed the petition for Ford or she conspired with Searles to sign Ford's name to the petition. She obtained the power of attorney to sign Ford's name to the petition and either she or Searles actually signed the petition. In doing so, Davis violated 11 U.S.C. § 110(e)(1), which carries a fine not to exceed \$500 for each document. Davis filed the petition. Davis and Searles advanced or obtained the filing fees. In doing so, Davis violated 11 U.S.C. § 110(g)(1), which carries a fine not to exceed \$500 for each violation.

Davis testified that she prepared the Washington and Ford petitions to stay noticed foreclosure sales of their houses. She testified that she prepared the petitions after learning that the clerk of court could not accept for filing petitions prepared by Parker. Assuming the best of intentions on her part, she nevertheless acted either as Parker's employee after learning that Parker could not file the previously prepared petitions for Washington and Ford, or acted as a bankruptcy petition preparer for compensation or engaged in the unauthorized practice of law.

With regard to Washington and Ford, the record does not establish the dates of Parker's work on their bankruptcy petitions. The court, therefore, cannot find that Parker

performed this work after he had been served with the court's order. But, both Parker and Davis knew that he could not engage in Chapter 13 practice before this court by August 6, 2002, the date that the clerk of court refused to accept the Washington and Ford petitions prepared by Parker. As previously found, Davis, a contract employee of Parker, then attempted to circumvent the court's order by preparing new petitions for Washington and Ford to file or improperly acted as a bankruptcy petition preparer or engaged in the unauthorized practice of law, compelling the court to impose a sanction for that action.

Parker had been suspended from the practice of law by the State Bar of Texas in the autumn of 2002. He testified that he had been suspended for non-payment of his occupation tax and non-payment of his state bar dues. He testified that his suspension lasted for 30 to 60 days, but that he had been reinstated on November 27, 2002. He testified that he was practicing law, but not practicing bankruptcy law.

Accordingly,

IT IS ORDERED that:

1. The clerk of court shall not accept for filing any pleading or paper from Philip E. Parker acting in a case under the Bankruptcy Code without further order of this court.

2. Philip E. Parker may file a motion for relief from this order upon meeting the following requirements:

a. Completion of three CLE courses covering basic bankruptcy law, consumer bankruptcy practice and ethical conduct of a lawyer. The motion must include documentation of each course's content.

b. Certification by the State Bar of Texas that his license to practice law in the State of Texas had not been suspended during the 12 months preceding his motion for relief from this order.

c. Documentation of the existence of Parker's IOLTA account and the manner of communicating with Parker, including his office address, phone number and fax number. If he is practicing law out of his personal residence, he must include a certification from the applicable local government that the practice of law out of a personal residence does not violate any zoning restriction and a certification from the State Bar of Texas that the practice of law out of a personal residence does not violate any ethical standard established by the Supreme Court of Texas.

3. J. E. Davis shall pay a fine of \$1,000 for violations of 11 U.S.C. § 110 or, alternatively, for attempts to circumvent an order of this court or to engage in the unauthorized practice of law. The clerk of court shall not accept for filing any paper or document that reflects Davis as a bankruptcy petition preparer

until she pays this fine. The court admonishes Davis that if she acts as a bankruptcy petition preparer, she must scrupulously adhere to the requirements of 11 U.S.C. § 110. If, on the other hand, she acts as an employee of an attorney, the attorney must perform the legal work and execute the documents as counsel.

4. Philip E. Parker shall pay the Standing Chapter 13 Trustee for his costs and expenses in prosecuting this matter, including his legal fees.

Signed this _____ day of January, 2003.

Steven A. Felsenthal, Chief
United States Bankruptcy Judge