

United States Bankruptcy Court,  
E.D. New York.  
**In re Yvonne FRANCE, Debtor.**  
No. 101-16110-353.

Jan. 22, 2002.

Chapter 7 debtor moved for award of sanctions against non-attorney who assisted debtor in filing for Chapter 7 relief. The Bankruptcy Court, Jerome Feller, J., held that: (1) real estate broker who solicited \$15,000 from debtor for assistance in saving debtor's home from foreclosure, and who either prepared or instructed debtor as to how to prepare three separate bankruptcy petitions for filing, qualified as "bankruptcy petition preparer," whose conduct was regulated by Bankruptcy Code; (2) value of petition preparer's services was zero; and (3) petition preparer would be required to pay separate \$500 fine for each statutory violation...

**Jeffrey L. Saltiel**, Tenenbaum, Dunbar, Saltiel & Berger, Brooklyn, NY, for Debtor.

Michael A. Resilard, Forest Hills, NY, Pro se.

Stuart P. Gelberg, Garden City, NY, Chapter 13 Trustee.

Linda Riffkin, New York City, Office of the United States Trustee.

*DECISION REGARDING CONDUCT OF BANKRUPTCY  
PETITION PREPARER AND CERTIFICATION TO  
DISTRICT COURT*

JEROME FELLER, Bankruptcy Judge.

*INTRODUCTION*

On August 1, 2001, a hearing was held on a motion filed by Yvonne France ("France" or the "Debtor"), Chapter 13 Debtor herein, for sanctions under Bankruptcy Code Section 110, 11 U.S.C. § 110 (hereinafter "Section 110"), against Michael A. Resilard ("Resilard"). Specifically, the Debtor seeks the following relief: 1) To penalize Resilard and Mars Associates Inc. ("Mars"), a Resilard alter ego, for not complying with the statute governing bankruptcy petition preparers in three Chapter 13 bankruptcy cases of the Debtor; 2) To order, pursuant to Section 110(h)(2) and (3), Resilard and Mars to disgorge and turnover to the trustee the sum of \$17,000 paid to Resilard and Mars; and 3) To certify, pursuant to Bankruptcy Code Section 110(i)(1), the findings of fact constituting the violations of Section 110 to the District Court.

*FINDINGS OF FACT*

The Debtor testified that she was solicited by Resilard to file a petition and on June 1, 1999 she paid him \$15,000 at that time to "save my home from being foreclosed." According to the Debtor, Resilard told her that "the first thing he will do is file [sic] bankrupt." Thereafter, the Debtor paid Resilard an additional \$2,000 in cash.

A petition under Chapter 13 of the Bankruptcy Code was filed in the name of Yvonne France on June 9, 1999. The Debtor testified that on June 1, 1999, she met with Resilard and signed blank

bankruptcy forms in front of him....France was told by Resilard not to go to Court or to the meeting of creditors, Resilard also instructed her to forward all mail from her creditors and the Bankruptcy Court to him. On September 9, 1999, the first bankruptcy case was dismissed.

The Debtor's second Chapter 13 petition was filed on November 15, 1999 in the Southern District of New York. The Debtor testified that she was not familiar with that document, nor did she know that it was even being filed....France had no knowledge of the Manhattan address listed as her address on the petition. This bankruptcy filing bore an address for the Debtor of 205 West 88th Street, Apt. 9D, New York, New York 10024. According to Resilard, this residence is his family's old address. Although Resilard's name does not appear on this petition, the Debtor assumes that he prepared this petition and paid the filing fee. This petition, which was filed in the Southern District of New York, was dismissed with prejudice to refile for one year on March 2, 2000. The Debtor states that she did not see this petition until she obtained a copy of her file from Resilard, sometime after the case was dismissed.

The Debtor's third Chapter 13 petition was filed on February 23, 2000. The Debtor testified that she prepared the bankruptcy petition in the presence of Resilard under his specific directions, and that she filed the petition and schedules *pro se*....When the Debtor queried Resilard as to why she had to do this, she was told "you have to keep doing it until they accept it." Resilard instructed her where and how to file and she complied. This petition was dismissed with prejudice to refile for one year on April 5, 2000.

At this point, the Debtor stated that we were "fed up" with Resilard's failures to save the homestead and his endless requests for more money; an attorney was sought and the church referred the Debtor and her husband to an attorney who filed a Chapter 13 case on behalf of Mr. France that was also eventually dismissed....

The Court found the Debtor to be a highly credible witness; her testimony was straightforward and non-evasive. On the other hand, the Court found Resilard to be a wholly incredible witness. He was argumentative and belligerent in his answers to almost every question posed and he deliberately tried to obfuscate the record; his testimony was neither straightforward nor honest.

(A good example of Resilard's efforts to mislead occurred as follows: At the August 1, 2001 hearing, and after reviewing the file in this matter, Judge Duberstein stated, with Resilard present, "Well, this is the past history of what happened. I am a bankruptcy judge...for 20 years. And for about 15 of the 20 years, I had experience, heavily, with bankruptcy petition preparers. One of them went to jail. Others were absolutely forbidden from appearing in my court. Others were directed to turn monies over. I have never read about a case as horrendous, as bad, as this one in which you participated." Yet, at the October 18, 2001 hearing, when this Court posed a question to Resilard regarding a directive by Judge Duberstein, Resilard responded cryptically saying, "No. Judge Duberstein directly said this case is like a frivolous case.")

It is undisputed that Resilard is not admitted to practice law in any jurisdiction, nor is he employed by an attorney licensed to practice law...

Resilard operates his businesses by purchasing mailing lists of people whose homes are in foreclosure and solicits their business by mailing to them letters offering his services, which include representations that he assists in stopping foreclosures *pro se*, arranges "short sales," and refinances mortgage debt using a so-called accumulated equity in the property.

Resilard testified that he was only familiar with the first bankruptcy petition that he says was filed and signed by an attorney, Chester Miller, Esq. As Resilard stated, "We did retain an attorney for her [the Debtor], yes. Mr. Miller was her attorney for the bankruptcy at the time, yes." Remarkably, Resilard stated that Mr. Miller also represented the potential buyer for the Debtor's property. On the other hand, France firmly denied ever meeting Mr. Miller or hiring him for the purposes of filing any bankruptcy...

Resilard was found to violate the provisions of Section 110 in the past. *Carolyn S. Schwartz v. Michael Resilard d/b/a First Equity Financial Services and M.A.R.S. Associates, Inc. (In re Gerarda Donahue)*, Case No. 897-81726-288; Adv. Proc. No. 897-8596-288 (Bankr.E.D.N.Y. May 20, 1998) (unpublished Memorandum Opinion and Order, Honorable Stan Bernstein, U.S.B.J.) (collectively the "Order"). The Order permanently restrained Resilard from assisting debtors in the preparation or filing of any petitions under any chapter of the Bankruptcy Code, which included utilizing bankruptcy forms or templates for third parties or from preparing any pleadings or other legal documents relating to bankruptcy cases for third parties... The Order also enjoined Resilard from the illegal and unauthorized practice of law before the United States Bankruptcy Court, including but not limited to advising customers or clients verbally or in writing as to the meaning or significance of legal terms in connection with bankruptcy cases or proceedings or preparing legal documents on behalf of third parties. Resilard did not appeal the Order.

Resilard testified that he was familiar with Judge Bernstein's opinion but that it "has no bearing over this case"... The record herein fully support a finding that Resilard is a bankruptcy petition preparer as defined in Section 110(a)(1)... Resilard has not provided a scintilla of credible evidence to controvert these findings. Resilard's testimony was fraught with untruths, inconsistencies and contradictions and thus, his testimony is accorded no weight. Indeed, on August 1, 2001, after reviewing the file and Judge Bernstein's decision, Judge Duberstein swiftly concluded that Resilard is a bankruptcy petition preparer...

Stuart P. Gelberg, the Chapter 13 trustee, testified as an expert witness as to the value of the services rendered by Resilard. According to Mr. Gelberg, the value of Resilard's services in each of the three bankruptcy cases is zero. Mr. Gelberg further testified that Resilard is "a plague on the community."

#### DISCUSSION

Section 110 provides for monetary sanctions and injunctive relief against bankruptcy petition preparers who violate the provisions of that section. As defined in Section 110(a)(1), a bankruptcy petition preparer is "a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing"...

The record is devoid of any evidence to suggest that Resilard is *not* a bankruptcy petition preparer. Significantly, in another case in which Resilard also denied that he was a bankruptcy preparer, Judge Bernstein concluded that there was no evidence to suggest otherwise. *In re Gerarda Donahue, supra...*

In sum, Resilard has not provided any credible evidence to controvert the Debtor's sworn testimony and affidavit that Resilard received compensation in connection with and was instrumental in preparing and filing the three prior bankruptcy petitions of the Debtor. As such, the Court finds that Resilard is a "bankruptcy petition preparer" as defined by Bankruptcy Code Section 110(a)(1).

Having resolved that Resilard is a bankruptcy petition preparer, the Court must determine whether Resilard complied with the requirements of Section 110...

None of the three bankruptcy petitions in this litigation contained any information indicating they had been prepared by Resilard...

#### CONCLUSIONS OF LAW

Resilard is a bankruptcy petition preparer as defined under Bankruptcy Code Section 110(a) and he prepared all three bankruptcy petitions within the meaning of that statute.

The value of the services rendered by Resilard is zero.

Resilard three times violated Bankruptcy Code Section 110(b)(1) which provides that "a bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address"...

Resilard violated Section 110(c)(1) three times in that he failed to place on the petitions his social security number. He also violated Section 110(d)(1) three times in that he failed to provide the Debtor with a copy of the petitions until long after the documents were actually filed. Resilard twice violated Bankruptcy Code Section 110(g)(1). He filed the first two petitions and the Debtor did not give any money for the filing fees. Yet, court records show the filing fees were paid. Thus, we *per force* conclude that Resilard paid the filing fees. We further find that Resilard violated Section 110(h)(1) three times, as he did not file any declaration with the Court disclosing fees paid by the Debtor in the sum of \$17,000. We also conclude that Resilard and Mars' services were of no value to the Debtor.

The Debtor has requested and the Court grants the following relief:

- 1) Pursuant to Section 110(b)(2), Resilard and Mars are imposed with the fine of \$500 in each of the three prior bankruptcy cases for a total sum of \$1,500;
- 2) Pursuant to Section 110(c)(3), Resilard and Mars are imposed with the fine of \$500 in each of the three prior bankruptcy cases for a total sum of \$1,500;
- 3) Under Section 110(d)(2), Resilard and Mars are imposed with the fine of \$500 in each of the three prior bankruptcy cases for a total sum of \$1,500;
- 4) Pursuant to Section 110(e)(2), Resilard and Mars are imposed

with the fine of \$500 in the second bankruptcy case;

5) Pursuant to Section 110(g)(2), Resilard and Mars are imposed with the fine of \$500 in the first and second bankruptcy cases for a total sum of \$1,000;

6) Pursuant to Section 110(h)(2), the Court disallows Resilard and Mars' fee of \$17,000 and orders the immediate turnover of said sum to the Chapter 13 trustee, Stuart P. Gelberg; and

7) Pursuant to Section 110(i)(1), the Court hereby certifies to the District Court its findings of fact in respect of the Section 110 violations, and the fraudulent, unfair or deceptive acts of Resilard and Mars.

The Court also concludes that Resilard violated the injunctions contained in the Order issued by Judge Bernstein in the *In re Gerarda Donahue* bankruptcy case. The Order was violated by, *inter alia*, the following activities: i) Resilard assisted France in the preparation and filing of the three bankruptcy petitions and he sent communications to her at a time that she was involved in a foreclosure proceeding; ii) Resilard offered financial and consulting services to France when she was suffering the prospect of a foreclosure sale, and charged a fee for those services; and iii) Resilard advised France verbally and in writing as to her legal rights in connection with the bankruptcy cases and prepared legal documents.

Resilard preys upon frightened people who are on the verge of losing their homes. He takes advantage of them to his pecuniary advantage without rendering any *bona fide* services to them. Resilard's activities do not appear to be of any redeemable social value and, in fact, may well cause substantial harm to his clients and the public at large. Innocent and naive debtors, such as France, rely upon Resilard's advice and supposed expertise to their detriment. Indeed, there are strong indications that Resilard is engaged in an elaborate scheme of dishonest, immoral and illegal bankruptcy related practices.

In view of the foregoing, this Court directs the United States Trustee to conduct further investigation into the nature and scope of Resilard's illegal, fraudulent and deceptive bankruptcy related practices and, if appropriate, refer Resilard and/or any of his alter egos to the United States Attorney for possible criminal prosecution.

#### *CERTIFICATION TO DISTRICT COURT*

This Court hereby certifies to the District Court that it has found Resilard in violation of 11 U.S.C. § § 110(b), (c), (d), (e), (g) and (h). Resilard's preparation and filing of skeletal Chapter 13 petitions merely to thwart foreclosure and related misconduct, all of which were enjoined by a prior order of the Bankruptcy Court and for which he had the temerity to take \$17,000 for services rendered, constitute "fraudulent, unfair, and deceptive acts." Resilard preyed on a desperate individual on the verge of losing her home. He solicited the Debtor through direct mail and represented that foreclosure of her home could be prevented by using his services. Resilard gave the Debtor false hope and poor advice, took an exorbitant amount of money and dashed, perhaps irreparably, her chances of saving her home. The egregiousness and severe impact of Resilard's disregard of our bankruptcy laws and bankruptcy court orders cry out for the imposition of additional sanctions.