

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE

X'LEXUS JOHNSON,

Debtor,

Case No. 16-cv-64-JPG

Ch. 13 Bankruptcy Case No. 15-31025

NANCY GARGULA, United States Trustee,

Petitioner,

v.

WENDELL TAYLOR,

Respondent.

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation and Certification (“Report”) (Doc. 4) of Bankruptcy Judge Laura K. Grandy finding respondent Wendell Taylor violated the terms of a Consent Judgment and Injunction entered in *In re Cross*, Bankr. Case No. 11-32217, Adv. Case No. 11-3392 (Bankr. S.D. Ill.), and violated 11 U.S.C. § 110 in a number of ways in connection with the bankruptcy proceeding of debtor X’Lexus Johnson. Judge Grandy recommended the Court grant the United States Trustee’s motion for sanctions (Doc. 2) and find Taylor in civil and criminal contempt. Taylor filed an objection to the Report (Doc. 10).

The Consent Judgment in *In re Cross* prohibits Taylor from preparing any bankruptcy petition for filing in the Bankruptcy Court, delivering any bankruptcy paper to the Bankruptcy Court for filing, or giving any advice in any bankruptcy matter:

Accordingly, Taylor, and each of his agents, servants, employees, associates, and all persons and entities in active concert participation with any of them are permanently enjoined from preparing for compensation, or not for compensation, any bankruptcy petition in the United States Bankruptcy Court in connection with a case under title 11 of the United States Code, as of the date of the entry of this

Consent Judgment or otherwise acting as a bankruptcy petition preparer as that term is defined in 11 U.S.C. § 110. Taylor is further prohibited from delivering any bankruptcy paper to the bankruptcy court for filing. Taylor is also prohibited from providing any advice in any bankruptcy related matter to any person.

Consent Jmt. ¶ 4 (Bankr. Case No. 11-32217, Adv. Case No. 11-3392, Doc. 18). Taylor stipulated to the Consent Decree on March 8, 2012, and Judge Grandy entered it on March 13, 2012.

The pending matter arose in connection with Johnson's bankruptcy after her voluntary Chapter 13 petition was dismissed for want of prosecution because she failed to submit the required documents with her petition. In considering Johnson's request to reinstate her case, the Bankruptcy Court came to believe Taylor had prepared Johnson's petition in violation of the *In re Cross* Consent Judgment and Injunction set forth above.

The Bankruptcy Court was tipped off to Taylor's alleged involvement at an August 13, 2015, hearing on Johnson's request to reinstate her case. Johnson was able to remember a number of details concerning the person who helped her prepare her petition. She testified that her mother had helped her contact a man her mother knew who had helped Johnson's aunt file a bankruptcy petition. That man helped Johnson file her bankruptcy case. The man was in O'Fallon, Illinois. Johnson met with him at the O'Fallon Library. He was about 58 or 56 years old, was black and was short. He drove a red Chrysler Sebring to the meeting; Johnson could tell it was a rental car because of the license plates. At some point, the man talked to her on the phone and asked a lot of questions, and then asked her to take some kind of test on a website. Johnson then met the man again at the mall after school to get her completed bankruptcy papers from him. At that time he was driving a white Dodge Dart, which Johnson also believed was a rental car. He told Johnson where to turn the papers in to the Bankruptcy Court, and she did. He had prepared Johnson's

bankruptcy plan for her and told her there would be a monthly payment, but he never told her how much the monthly payment would be. The man had helped Johnson's aunt, Carrie Clay, prepare the paperwork for her bankruptcy case. He had also helped Johnson file a Chapter 7 bankruptcy petition a few years earlier. Transcript of Aug. 13, 2015, Hrg. (Doc. 26).

During Johnson's testimony, Judge Grandy looked up Carrie Clay's case and found that Taylor had prepared Clay's petition. Judge Grandy found Johnson's testimony credible and concluded that Taylor had also prepared Johnson's petition. Of course, Taylor did not receive notice of the hearing because Johnson's petition did not disclose that Taylor had prepared her petition, and until the hearing, there was no indication he was connected to the case.

The information that came to light at the August 13, 2015, hearing spurred the United States Trustee to file a motion for sanctions against Taylor and for a referral from the District Court for possible criminal prosecution (Doc. 2). The United States Trustee's motion was based in part on Taylor's apparent preparation of Johnson's bankruptcy petition. The motion was served on Taylor by mail. Judge Grandy set a hearing on that motion for October 15, 2015, and notice of that hearing was served on Taylor by mail. He failed to appear at the hearing. At that hearing, the United States Trustee represented that he had provided a recent picture of Taylor to Johnson's counsel to show to Johnson for identification purposes. Johnson's counsel represented to the Court that he had shown Johnson the picture and that she had confirmed that the individual in the picture was the man who had prepared her bankruptcy petition for her. Transcript of Oct. 15, 2015, Hrg. at 5-6 (Doc. 27).

After considering the United States Trustee's motion and Taylor's failure to appear at the October 15, 2015, hearing, Judge Grandy issued the Report finding Taylor had violated the

Consent Judgment and Injunction in *In re Cross* and had independently violated various provisions in 11 U.S.C. § 110. She recommends that the Court withdraw, in part, the Bankruptcy Court reference in the instant case and in *In re Cross* pursuant to 28 U.S.C. § 157(d) for the limited purpose of considering criminal contempt proceedings or further civil contempt proceedings against Wendell Taylor for the foregoing violations. Judge Grandy specifically recommends:

- Granting the U.S. Trustee's motion for sanctions (Doc. 2);
- Imposing a fine of \$7,500.00 pursuant to 11 U.S.C. § 110(l)(1) and (2), payable to the United States Trustee, for violations of 11 U.S.C. §§ 110(b)(1), (b)(2), (c)(1), (e)(2)(A), and (h)(2);
- Imposing a \$2,000.00 fine payable to debtor X'Lexus Johnson pursuant to 11 U.S.C. § 110(i)(1);
- Ordering that Taylor fully disgorge and forfeit the \$400.00 fee that he received from Johnson in this case;
- Finding that Taylor is in civil contempt of the Consent Judgment and Injunction entered by the Bankruptcy Court on March 13, 2012, in *In re Cross*, Bank. Case No. 11-32217, Adv. Case No. 11-3392; and
- Finding that Taylor is in criminal contempt of the Consent Judgment and Injunction entered by this Court on March 13, 2012, in *In re Cross*, Bank. Case No. 11-32217, Adv. Case No. 11-3392.

Taylor was served by mail with the Report and advised in writing that he had fourteen days to file written objections to the Report.

Taylor did not file objections within fourteen days, so the Bankruptcy Court transmitted the Report to this Court for its consideration. This Court then extended Taylor's time to object until March 25, 2016; Taylor filed a late objection on March 28, 2016. Taylor objects only to Judge Grandy's finding that he prepared Johnson's bankruptcy petition, calling Johnson's testimony "so incredibly unbelievable" that with proper cross-examination, it would have been

obvious she was not telling the truth. Obj. at 3 (Doc. 10).

The Court accepted Judge Grandy's recommendation with respect to the bankruptcy reference and, pursuant to 28 U.S.C. § 157(d), withdrew in part the bankruptcy reference in this case and in *In re Cross*, Bankr. Case No. 11-32217, Adv. Case No. 11-3392, (Bankr. S.D. Ill.), to the extent necessary to consider the United States Trustee's motion (Doc. 2) and Judge Grandy's Report (Doc. 4).

The Court then issued an order for Taylor to show cause at a hearing on September 16, 2016, why the Court should not find him in civil contempt for violation of the Consent Judgment and Injunction entered by the Bankruptcy Court on March 13, 2012, in *In re Cross*, Bank. Case No. 11-32217, Adv. Case No. 11-3392, and impose the additional sanctions recommended by Judge Grandy (Doc. 11). The United States Marshals Service served the order to show cause on Taylor pursuant to Federal Rule of Civil Procedure 4(e)(2)(B) by leaving a copy of the order at Taylor's usual place of abode with someone of suitable age and discretion who resides there. The United States Trustee also arranged informally with Johnson and her bankruptcy attorney for Johnson to appear voluntarily at the show cause hearing, but four days before the hearing, Johnson's attorney informed the United States Trustee that she was no longer willing to appear voluntarily. The United States Trustee was not able to arrange for service of a subpoena in time to secure Johnson's appearance at the hearing. Johnson did not appear at the hearing, so the Court continued it to enable the United States Trustee to compel her appearance by subpoena.

At the December 9, 2016, Johnson appeared and testified when called by the United States Trustee. This time, her memory of her petition preparation was much less distinct. For example, when questioned by the United States Trustee, she was fuzzy about the help she received filing her

petition:

Q. Your 2015 case --

A. Uh-huh.

Q. -- that you filed last year, --

A. Okay.

Q. -- you filed that on your own, correct? You didn't have an attorney help you?

A. Right.

Q. You had someone help you, though, isn't that true?

A. Yeah, I guess. I didn't -- Yeah, I guess.

Q. There was a man that helped you?

A. No, my momma. I had really never seen him before. Everything went to my mom. I sent it to my momma.

* * *

A. Basically I gave her some money, she got it together. I didn't really know how to file bankruptcy and stuff, so basically she got it together for me.

Q. Your mom, Linda Johnson, got together what for you?

A. The bankruptcy part.

Q. Okay. Did she prepare the bankruptcy part for you?

A. I just gave her the money, so I don't know what she did, honestly.

* * *

Q. Your mom went to a man to help with the preparation of your bankruptcy case, is that correct?

A. Uh-huh.

Q. You have to say *yes* or *no*.

A. I've got to say -- If I'm not sure what am I supposed to say?

Q. Well, do you know the answer?

THE COURT: Do you understand the question?

A. I understand the question, but I don't know if she went to a man or woman or not. I don't know. So, should I say *no*, *yes* or *no*? I guess I say *no*, *yes*. I don't know. Can I say *I don't recall*? I don't know.

* * *

Q. Your mom went and got a man to help her?

A. Not for sure was it a man or not. I don't know what it was. I don't know. It went through my momma. She knows -- That's who you go to when you need help, right, your mom? Yeah.

* * *

Q. So, the same person that helped your mom and your aunt helped you, correct?

A. I guess so, yeah.

Q. I'm sorry, what?

A. I guess so, yeah.

Transcript of Dec. 9, 2016, Hrg. ("12/9/16 Tr.") at 6-11 (Doc. 28). Johnson's recollection of her

interactions with the man who helped her prepare her bankruptcy paperwork was also much more vague than it was in her prior testimony:

Q. You had a telephone conversation with this man who helped you prepare your paperwork, didn't you?

A. I had to meet him somewhere, yeah.

Q. Well, before you met him you spoke with him on the telephone, didn't you?

A. Yeah, to meet him somewhere. That's what I called him on.

Q. When you spoke to him on the telephone did he also ask you a series of questions concerning your financial condition?

A. I don't even remember, truthfully.

* * *

Q. After that phone conversation some time passed, is that correct, --

A. I don't --

Q. -- before you met with him again?

A. I really don't -- I told you over here I didn't recall. I don't remember.

Q. I understand.

A. Right.

Q. You did meet with him at one point, didn't you?

A. Yeah, I did meet with him.

Q. And where did you meet with him at?

A. I think at the library, if I ain't mistaken. Or was it at the mall? I don't remember.

* * *

Q. And, at the time that you met with him you picked up the paperwork, right?

A. Right.

Q. The bankruptcy paperwork?

A. I guess. Yeah, I guess.

Q. That was already typed up, correct?

A. I didn't really look at it. I took it straight out to my momma. I think I went into the mall afterwards. I did. I went to Charlotte Russe. They had a sale. But, yeah.

Q. And you had to complete bankruptcy paperwork?

A. I just set it in the car at the mall.

Q. Okay. Did it eventually get filed with the Court?

A. I don't remember. Truthfully, I don't remember.

Q. Did you file your paperwork with the Court?

A. I think so. And bring it to the Court downstairs?

Q. Yes.

A. Yeah, I don't think I did it that day; but, yeah.

Q. But, you actually did it yourself personally, correct?

A. Yeah; yeah.

Q. So, the same man that prepared the bankruptcy petition paperwork for your aunt and your mom also prepared your plan for you, is that correct?

A. Yeah, that's what I was told.

12/9/16 Tr. at 12-14 (Doc. 28). Johnson then testified that Taylor, who was in the courtroom at the time, was not the man she met with and that she knew it was not him because the man she met was bigger than the man in the courtroom and had a high-pitched voice. 12/9/16 Tr. at 15-16 (Doc. 28). The United States Trustee impeached Johnson with her prior testimony from the August 13, 2015, hearing, which she explained as being given at a time when she was confused. 12/9/16 Tr. at 8 (Doc. 28).

The Court finds Johnson's testimony at the December 9, 2016, hearing incredible in many respects. First, it is completely implausible to the Court that Johnson could remember so many details in her August 13, 2015, testimony – for example, the man's approximate age, the make, model and color of the cars he drove, that at least one of the cars had a rental car license plate, the chronology of her contacts with the man, and the explanation the man gave of the bankruptcy plan – yet have such a vague memory at the December 9, 2016, hearing, where she balked at even admitting the person was a man. The United States Trustee effectively used Johnson's earlier testimony to impeach her testimony at the later hearing. Additionally, Taylor failed to conduct any cross-examination of Johnson to support his contention in his objections that her August 13, 2015, testimony was “incredibly unbelievable” and would have been shown to be false by proper cross-examination. Instead, Johnson explained her earlier testimony by saying she was confused at the time. Her explanation does not hold water. It appears that Johnson was more confused at the later hearing where she claimed she could not remember numerous things about which she testified clearly at the earlier hearing. If she was confused at all, it was at the December 9, 2016, hearing. To the extent Johnson's differing testimony was actually a product of faded memory due

to the passage of time, her earlier testimony would be more accurate because the events were fresher in her mind. These factors, in combination with Johnson's manner while testifying at the December 9, 2016, hearing, lead the Court to find her incredible at that hearing and, instead, to accept Judge Grandy's conclusion that Johnson was credible at the August 13, 2015, hearing. Thus, the Court finds that Taylor did, in fact, prepare Johnson's 2015 Chapter 13 bankruptcy petition for her.

Taylor's only objection to the Report was the factual finding that he prepared Johnson's 2015 bankruptcy petition. Following a *de novo* review of that factual finding, the Court will adopt that finding for the reasons set forth above. The Court has further reviewed the other portions of the Report for error and finds none.

Accordingly, for the foregoing reasons, the Court:

- **ADOPTS** the Report, Recommendation and Certification (Doc. 4) in its entirety as to its civil recommendations;
- **OVERRULES** Taylor's objections (Doc. 10);
- **GRANTS in part** and **DENIES in part** the United States Trustee's motion for sanctions (Doc. 2);
- **ORDERS** that Taylor shall pay a fine of \$7,500.00 pursuant to 11 U.S.C. § 110(l)(1) and (2), payable to the United States Trustee, for violations of 11 U.S.C. §§ 110(b)(1), (b)(2), (c)(1), (e)(2)(A), and (h)(2);
- **ORDERS** that Taylor shall pay a fine of \$2,000.00 payable to debtor X'Lexus Johnson pursuant to 11 U.S.C. § 110(i)(1);
- **ORDERS** that Taylor shall fully disgorge and forfeit the \$400.00 fee that he received in this case;
- **FINDS** that Taylor is in civil contempt of the Consent Judgment and Injunction entered by the Bankruptcy Court on March 13, 2012, in *In re Cross*, Bank. Case No. 11-32217, Adv. Case No. 11-3392; and
- **DIRECTS** the Clerk of Court to enter judgment accordingly.

In light of the recalcitrance of Johnson as a witness to the relevant events, the Court **DECLINES** to refer this matter to the United States Attorney's Office for prosecution for criminal contempt at this time but **WARNS** Taylor that it may do so in this or any other case if it learns he continues to violate the Consent Judgment and Injunction entered by the Bankruptcy Court on March 13, 2012, in *In re Cross*, Bankr. Case No. 11-32217, Adv. Case No. 11-3392. The Court further **DIRECTS** the Clerk of Court to send a copy of this Memorandum and Order to Judge Grandy.

IT IS SO ORDERED.

DATED: April 3, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE