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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-14-1091-DKiTa
)	
EARL JACKSON, JR. and CHERYL)	Bk. No. 13-29626-WB
HODGES JACKSON,)	
)	
Debtors.)	
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MOSES F. ABONAL; ABONAL)	
PARALEGAL SERVICES,)	
)	
Appellants,)	
)	
v.)	M E M O R A N D U M¹
)	
UNITED STATES TRUSTEE,)	
)	
Appellee.)	
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Argued and Submitted on October 23, 2014
at Malibu, California

Filed - November 3, 2014

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Julia W. Brand, Bankruptcy Judge, Presiding

Appearances: Marvin Levy argued for Appellants; Ron Maroko
argued for Appellee.

Before: DUNN, KIRSCHER AND TAYLOR, Bankruptcy Judges.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Mr. Abonal is not an attorney licensed to practice in
2 California. He operates a business called Abonal Paralegal
3 Services, located in Los Angeles, California. Mr. Abonal listed
4 his business address as the same one Ms. Prager indicated was her
5 office address (i.e., Santa Monica Boulevard).

6 The debtors, Earl and Cheryl Jackson, filed their chapter 7
7 petition on August 2, 2013. They converted their case to
8 chapter 13 on November 1, 2013, but later voluntarily dismissed
9 their case on December 4, 2013.³

10 Prepetition, the debtors gave Mr. Abonal a total of \$1,806,
11 which included the \$306 court filing fee.⁴ The debtors paid
12 Mr. Abonal \$800 cash on June 22, 2013, and then directly
13 deposited \$706 and \$300 into his personal bank account on July 2,
14 2013, and July 11, 2013, respectively. When he filed their
15 bankruptcy documents, Mr. Abonal used his own credit card to pay
16 the debtors' filing fee.

17 Mr. Abonal prepared the debtors' bankruptcy documents,
18 including the petition, schedules, amended schedules, statement
19 of financial affairs ("SOFA"), amended SOFA and the chapter 13
20 plan. He neither signed nor provided his social security number
21 or address on the petition, the certificate of non-attorney
22 bankruptcy petition preparer attached to the notice of available
23 chapters ("chapter notice"), the declaration concerning debtor's
24

25 ³ The bankruptcy court retained jurisdiction on all issues
26 arising under § 110. See docket no. 55.

27 ⁴ As the UST noted in its brief, Mr. Abonal does not dispute
28 that he received these funds from the debtors. He also admitted
this fact in his opening brief.

1 schedules ("schedules declaration"), the SOFA or the amended
2 SOFA. Ms. Prager signed all of these documents, except the SOFA,
3 amended SOFA and schedules declaration. She also signed the
4 electronic filing declaration and the verification of the
5 creditor mailing list.

6 Mr. Abonal did not file a declaration of non-attorney
7 bankruptcy petition preparer (Official Form 19) ("bankruptcy
8 petition preparer declaration"). He also did not file the
9 disclosure of compensation of a bankruptcy petition preparer
10 (Official Form 280) ("bankruptcy petition preparer fee
11 disclosure").

12 The SOFA, amended SOFA, the disclosure of compensation of
13 attorney for debtor ("attorney fee disclosure") and the
14 declaration re: limited scope of appearance pursuant to
15 LBR 2090-1 ("attorney appearance declaration") indicated that the
16 debtors paid Ms. Prager \$1,500. The attorney fee disclosure and
17 the attorney appearance declaration both indicated that
18 Ms. Prager was the attorney for the debtors.

19 Although she was named as their attorney, Ms. Prager neither
20 personally met the debtors nor spoke with them. She also did not
21 appear on their behalf at the initial and continued § 341(a)
22 meetings.⁵

24 ⁵ Ms. Prager admitted that she neither met nor spoke with
25 the debtors personally due to her health. She explained that she
26 was experiencing "excruciating pain in her lower extremity" which
27 prevented her from walking. Due to her pain, she was scheduled
28 to have surgery. Ms. Prager also admitted that she did not
appear at the initial and continued § 341(a) meetings on the
(continued...)

1 Instead, Mr. Abonal met with the debtors, advising them to
2 file for bankruptcy and explaining the various bankruptcy
3 chapters available to them. He informed the debtors that their
4 debts would be discharged in chapter 7, and later, that they
5 should convert their chapter 7 case to chapter 13. Mr. Abonal
6 also arranged to have attorneys make special appearances on the
7 debtors' behalf at the initial and continued § 341(a) meetings.⁶
8 Notably, these two attorneys did not speak with Ms. Prager about
9 the § 341(a) meetings; they only spoke with Mr. Abonal.⁷

10 On December 24, 2013, the UST filed its Motion against
11 Mr. Abonal.⁸ The UST sought a total of \$16,500 in fines against

12
13 ⁵(...continued)
14 debtors' behalf for this same reason.

15 ⁶ Mr. Abonal arranged these attorney appearances through a
16 service called Lawyers on Call. Lawyers on Call is a service
17 that obtains appearance attorneys to cover various court
18 appearances for attorneys in the Los Angeles area.

19 Kari Morris appeared on the debtors' behalf at the initial
20 § 341(a) meeting. Marvin Levy appeared on their behalf at the
21 continued § 341(a) meeting. He also represented Mr. Abonal at
22 the February 13, 2014 hearing on the UST's Motion and in this
23 appeal.

24 ⁷ Mr. Abonal did not submit a declaration from Ms. Morris.
25 However, in her declaration, Ms. Prager stated that Ms. Morris
26 had "informed [Ms. Prager's] office that the Chapter 7 Trustee
27 needed more documents to be submitted."

28 In his declaration, Mr. Levy stated that he "spoke with
Mr. Abonal on behalf [of] Ms. Prager" before the continued
§ 341(a) meeting. After the continued § 341(a) meeting, he
"called Ms. Prager's office and spoke with Mr. Abonal and gave
him a report of what had occurred at the [meeting]."

⁸ The UST also filed a motion for sanctions and/or
disgorgement of attorney's fees against Ms. Prager ("Attorney
(continued...)

1 him for eleven violations of § 110.⁹

2 Specifically, the UST contended that Mr. Abonal failed to
3 sign the petition, schedules and SOFA, or to provide an
4 identifying number on them, as required under § 110(b)(1) and
5 (c)(1), respectively. It further asserted that he failed to file
6 the bankruptcy petition preparer declaration and the bankruptcy
7 petition preparer fee disclosure timely, as required under
8 § 110(b)(2) and (h)(2).

9 The UST also claimed that Mr. Abonal collected payment from
10 the debtors for the court filing fee in violation of § 110(g).
11 It pointed out that the deposits of cash by the debtors into a
12 non-attorney bank account (i.e., Mr. Abonal's personal bank
13 account) indicated that Mr. Abonal, not Ms. Prager, controlled
14 the funds therein. Although he claimed that he delivered these
15 funds to Ms. Prager, Mr. Abonal did not provide any documentary
16 evidence of any withdrawal of any portion of these funds from his
17 bank account to make a payment(s) to Ms. Prager.

18
19 _____
20 ⁸(...continued)

21 Sanctions Motion"). See docket no. 58. Following a hearing, the
22 bankruptcy court granted the UST's Attorney Sanctions Motion,
23 entering an order directing Ms. Prager to disgorge and refund the
24 debtors \$1,500 in attorney's fees. See docket no. 76.

25 At the February 13, 2014 hearing on the Motion, the UST
26 informed the bankruptcy court that Ms. Prager had refunded the
27 money to the debtors.

28 ⁹ The UST apparently counted Mr. Abonal's failure to sign
each bankruptcy document as a separate and distinct violation.
The UST repeated this methodology as to Mr. Abonal's other
actions concerning his handling of the debtors' bankruptcy case
(e.g., failure to list his identifying number on the bankruptcy
documents).

1 The UST also contended that Mr. Abonal used the word "legal"
2 or a similar term in his ad or advertised under a category that
3 included the word "legal" or a similar term, in contravention of
4 § 110(f).

5 Specifically, the UST noted that case law had interpreted
6 § 110(f) to mean that bankruptcy petition preparer advertising
7 could not suggest that the bankruptcy petition preparer offered
8 legal services. Some business names that have been found to
9 violate § 110(f) include, "Legal Aid Services," "People's Law,"
10 "Legaltype" and "American Legal Clinic, Inc."

11 According to the UST, case law further had determined that
12 the term "paralegal" implied that such a person possessed legal
13 skills and worked under a lawyer's supervision or was authorized
14 to use those legal skills. Under California Business &
15 Professions Code § 6452(a), a person could not hold oneself out
16 as a paralegal on any ad, letterhead, business card, sign or
17 elsewhere unless he or she performed services under an attorney's
18 direction and supervision. It further provided that a
19 paralegal's business card must include the name of the law firm
20 where he or she was employed or a statement that he or she was
21 employed by or contracted with a licensed attorney.

22 Here, the UST argued, Mr. Abonal had used "paralegal" in his
23 business name, Abonal Paralegal Services. He placed his business
24 name on business cards.¹⁰ However, he did not mention Ms. Prager
25

26 ¹⁰ The UST also referenced a website called Manta.com.
27 Manta.com appears to be a website where people can search for and
28 locate products or services offered by small businesses in

(continued...)

1 at all on his business cards. The UST also pointed out that
2 Mr. Abonal had failed to submit any evidence showing that he was
3 Ms. Prager's employee. It stressed that the "admitted lack of
4 communication, in-person or by telephone, with Debtors . . .
5 supports a finding that [Ms.] Prager did not directly supervise
6 [Mr.] Abonal." The UST further emphasized that, in their
7 declaration, the debtors considered Mr. Abonal to be the person
8 they were hiring to prepare their bankruptcy documents. Thus, by
9 using "paralegal" in his business's name and advertising his
10 services as such on his business cards, Mr. Abonal violated
11 § 110(f).

12 The UST also asserted that Mr. Abonal violated § 110(e)(2)
13 by offering the debtors legal advice, even though he was not an
14 attorney within the meaning of § 101(4). It pointed out that
15 both Ms. Prager and Mr. Abonal admitted that Mr. Abonal had
16 explained to the debtors the various bankruptcy chapters
17 available to them, that their debts would be discharged and,
18 later, that they should convert their chapter 7 case to
19 chapter 13. Mr. Abonal admitted that he prepared the debtors'
20 chapter 13 plan and arranged to have Ms. Morris and Mr. Levy

21
22 ¹⁰(...continued)
23 various cities around the country. Small business owners can
24 list their services and products on Manta.com for free.

24 In his reply brief, Mr. Abonal claims that he neither placed
25 his business name on Manta.com nor authorized anyone to do so on
26 his behalf. He did not raise this argument before the bankruptcy
27 court, so we do not consider it here.

26 Moreover, we note that the bankruptcy court did not rely on
27 the Manta.com listing in making its determination. Instead, it
28 relied on the debtors' declaration and testimony at the continued
§ 341(a) meeting, among other evidence.

1 appear with the debtors at their § 341(a) meetings.

2 The UST sought \$5,500 in fines against Mr. Abonal for his
3 various violations of § 110. However, it asked that the
4 bankruptcy court triple this amount for a total of \$16,500 in
5 fines against him under § 110(1)(2)(D).

6 In support of its Motion, the UST submitted two
7 declarations, one from its bankruptcy analyst, Wendy Sadovnick,
8 and the other from the debtors. The UST also provided a portion
9 of the transcript of the continued § 341(a) meeting held on
10 September 25, 2014.

11 According to the debtors in their declaration, Mr. Abonal
12 had explained: 1) whether or not to file a bankruptcy petition;
13 2) the differences between chapters 7, 11, 12 or 13 bankruptcy
14 cases; 3) whether their debts would be discharged; 4) whether
15 they would be able to retain their home, car or other property
16 after filing bankruptcy; 5) any tax consequences from filing
17 bankruptcy; 6) whether they should enter into a reaffirmation
18 agreement; and 7) any bankruptcy procedures and rights they may
19 have as debtors in bankruptcy. The debtors further declared that
20 Mr. Abonal informed them that an attorney would review their
21 bankruptcy documents before filing the bankruptcy documents with
22 the bankruptcy court. They also stated that they received from
23 him a copy of the amended bankruptcy preparer guidelines issued
24 in February 2003 by the Office of the UST.

25 At the continued § 341(a) meeting, the debtors testified
26 that neither of them had met or spoken with Ms. Prager. They
27 further testified that they spoke only to Mr. Abonal and to May,
28 Ms. Prager's receptionist.

1 The debtors also testified that Mr. Abonal had explained the
2 differences between chapter 7 and chapter 13 and their ability to
3 keep their assets while in bankruptcy. They further testified
4 that he had advised them to file a chapter 7 petition and, if it
5 did not work out, to file a chapter 13 petition.

6 In her declaration, Ms. Sadovnick asserted that, throughout
7 the entire course of the debtors' bankruptcy case, she tried
8 several times to communicate directly with Ms. Prager without
9 success. Despite Ms. Sadovnick's requests, Ms. Prager never
10 returned her phone calls. Ms. Sadovnick only communicated with
11 May, Ms. Prager's receptionist, and Mr. Abonal, who had
12 introduced himself to Ms. Sadovnick as Ms. Prager's paralegal.

13 The UST submitted other documents in support of the Motion,
14 including copies of the debtors' bankruptcy documents, a printout
15 of the bankruptcy court's credit card transaction search result
16 in the debtors' bankruptcy case ("credit card transaction search
17 result"), and receipts evidencing the three payments the debtors
18 made to Mr. Abonal. It also submitted a copy of Mr. Abonal's
19 business card and a printout from Manta.com. Both the business
20 card and the Manta.com printout listed Mr. Abonal's business
21 name, address and contact information. (Notably, the Manta.com
22 printout described Abonal Legal Services as providing "an
23 amalgamation of legal services.").

24 Mr. Abonal opposed the Motion, arguing that he was not a
25 bankruptcy petition preparer within the meaning of § 110(a)(1).¹¹

26
27 ¹¹ The UST submitted a reply to Mr. Abonal's opposition.
28 Its reply repeated many of the arguments it made in its Motion,
(continued...)

1 Rather, he worked as Ms. Prager's paralegal. Because he was a
2 paralegal and not a bankruptcy petition preparer, Mr. Abonal
3 contended that he did not need to make certain disclosures and
4 take certain actions as required for bankruptcy petition
5 preparers.

6 As evidence in support of his opposition, Mr. Abonal
7 submitted his own declaration and the declaration of Ms. Prager.
8 Mr. Abonal and Ms. Prager's declarations essentially echoed all
9 of the assertions Mr. Abonal made in his opposition. However,
10 Mr. Abonal submitted no other evidence in support of his
11 opposition.

12 In the declarations and his opposition, Mr. Abonal claimed
13 that Ms. Prager had employed him as her paralegal for the last
14 eight years. In fact, Ms. Prager had "personally trained"
15 Mr. Abonal to perform paralegal work for her. At all times, he
16 asserted that he performed work only at Ms. Prager's office. She
17 paid him \$35 per hour for the services he performed as her
18 paralegal. Mr. Abonal also understood that Ms. Prager could
19 terminate his employment at any time.

20 As her paralegal, he was under her direct supervision and
21 control; Ms. Prager "had the right to exercise complete control
22 over [Mr. Abonal's] work and employment." "At all times,
23 [Ms. Prager] instruct[ed] and [gave] directions to Mr. Abonal [as
24 to] when and how to do or perform the legal services for all of
25

26 ¹¹(...continued)
27 though it added some other facts and contentions. We incorporate
28 these additional contentions into our summary of the UST's
Motion.

1 her clients on her behalf." He maintained that she instructed
2 him to "manage the daily operations of her office under her
3 direct supervision and control, such as[,] but not limited to[,]
4 meeting the clients on her behalf, obtaining initial information
5 from clients, accepting payments on her behalf, etc." He further
6 asserted that Ms. Prager always reviewed and approved any and all
7 documents he had prepared before they were filed with the court.

8 With respect to the preparation of the debtors' bankruptcy
9 case, Mr. Abonal averred that all the information he had given
10 the debtors was given pursuant to Ms. Prager's instructions. He
11 claimed that he did not provide this information to the debtors
12 on his own. He then went on to describe his interactions with
13 the debtors, careful to emphasize that all that he did and said
14 were at Ms. Prager's direction and instruction.

15 Mr. Abonal explained that, on June 21, 2013, the day before
16 he met with the debtors, he informed Ms. Prager that the debtors
17 wanted to file bankruptcy. She therefore instructed him to meet
18 with the debtors on her behalf as she could not personally meet
19 with them due to her health. Accordingly, Mr. Abonal met with
20 the debtors on June 22, 2013.

21 He averred that, before the meeting, Ms. Prager directed
22 Mr. Abonal to inform the debtors that Ms. Prager would be their
23 attorney in their bankruptcy case. She also told him to disclose
24 to the debtors the amount of her fee, which was \$1,500, as well
25 as the amount of the chapter 7 bankruptcy filing fee.

26 According to Mr. Abonal, at the meeting, the debtors told
27 him that they did not have the full amount for the attorney's fee
28 and the filing fee. They only had \$800 cash on hand. Upon

1 informing Ms. Prager, she directed Mr. Abonal to accept the \$800
2 cash on her behalf and to issue a receipt acknowledging the
3 payment. He averred that he later turned over these funds to
4 Ms. Prager. A week later, the debtors informed Mr. Abonal that
5 they wanted to pay a portion of Ms. Prager's fees in cash (i.e.,
6 \$706), but they could not meet with him personally to do so. At
7 Ms. Prager's direction, Mr. Abonal told the debtors to deposit
8 the funds in her bank account with City National Bank. The
9 debtors were unable to get to a City National Bank branch, so
10 again, on Ms. Prager's instruction, Mr. Abonal told the debtors
11 to deposit the funds into his bank account with Bank of America.
12 He repeated this instruction to the debtors when they later
13 sought to pay the remaining fees in cash.

14 He further asserted that Ms. Prager instructed him to
15 collect all of the debtors' financial information (e.g., billing
16 statements). She also directed him to explain to the debtors the
17 various bankruptcy chapters available to them and the mechanics
18 of each bankruptcy chapter. When the debtors disclosed their
19 financial difficulties, Ms. Prager instructed Mr. Abonal to
20 inform them that their debts could be fully discharged by filing
21 a chapter 7 petition.

22 Mr. Abonal averred that, when Ms. Prager received full
23 payment of her attorney's fees and the chapter 7 filing fee from
24 the debtors, she directed him to complete preparation of their
25 bankruptcy documents and to send the bankruptcy documents to her
26 for her review and approval. She later directed Mr. Abonal to
27 prepare the debtors' motion to convert their chapter 7 to
28 chapter 13, which she also reviewed and approved.

1 He further claimed that Ms. Prager also instructed him to
2 prepare the debtors' chapter 13 plan and other required
3 documents. When the debtors wished to dismiss their chapter 13
4 case, Ms. Prager directed him to prepare a motion to dismiss. He
5 maintained that she reviewed and approved the motion to dismiss
6 before she directed Mr. Abonal to file it.

7 At the February 13, 2014 hearing on the Motion, the UST's
8 attorney stressed that Mr. Abonal submitted no credible evidence
9 showing that he was Ms. Prager's employee. The UST's attorney
10 pointed out that Mr. Abonal's declarations only contained
11 self-serving statements. Moreover, the UST's attorney noted,
12 Mr. Abonal did not submit any other evidence, such as W-2s,
13 indicating that an employee-employer relationship existed between
14 himself and Ms. Prager.

15 After hearing the UST's and Mr. Abonal's arguments, the
16 bankruptcy court granted the Motion. It concluded that
17 Mr. Abonal was a bankruptcy petition preparer, finding that he
18 was not Ms. Prager's employee and was not under her direct
19 supervision.

20 The bankruptcy court found that the declarations submitted
21 by Mr. Abonal were not credible. It agreed with the UST that
22 Mr. Abonal had not submitted W-2s or any other evidence "other
23 than just the bold statement that he's an employee without
24 discussion of the terms of his employment because he also does
25 advertise himself as a paralegal and he's got his own paralegal
26 services [business]." Tr. of February 13, 2014 hr'g, 8:14-18.
27 The bankruptcy court opined "that [should be] given more weight
28 than just the [plain] statement that he's an employee." Tr. of

1 February 13, 2014 hr'g, 8:18-19.

2 The bankruptcy court found that Ms. Prager was absent during
3 the entire process of the debtors' bankruptcy case. It
4 determined that the debtors "believed that they were hiring
5 [Mr. Abonal], not Ms. Prager" Tr. of February 13, 2014
6 hr'g, 12:20-23.

7 Upon finding that Mr. Abonal was a bankruptcy petition
8 preparer, the bankruptcy court ruled in favor of the UST on all
9 of the § 110 violations asserted against Mr. Abonal. It further
10 found that Mr. Abonal was not entitled to any fees.

11 The bankruptcy court fined Mr. Abonal a total of \$5,550 for
12 all of his § 110 violations. It decided to double the fine,
13 which equated to \$11,000. The bankruptcy court believed that its
14 doubling of the fine was warranted in that the debtors "had to go
15 the round about route through two different chapters of
16 bankruptcy and without reaching resolution." Tr. of February 13,
17 2014 hr'g, 12:21-24.

18 Consistent with its ruling at the hearing, the bankruptcy
19 court entered both its factual findings and legal conclusions
20 ("findings and conclusions") and a separate order on February 24,
21 2014.

22 The findings and conclusions adopted additional factual
23 findings articulated in the UST's Motion, such as: 1) Mr. Abonal
24 was not an attorney licensed to practice in California;
25 2) Mr. Abonal filed the debtors' bankruptcy petition and paid the
26 court filing fee with his credit card; 3) Mr. Abonal's business
27 card did not state that he was performing paralegal services for
28 an attorney; 4) even if Mr. Abonal was Ms. Prager's employee, he

1 did not show that she directly supervised the bankruptcy services
2 he performed for the debtors; 5) although Ms. Prager's name
3 appeared on their bankruptcy documents, the debtors never met nor
4 spoke with Ms. Prager about their bankruptcy case; 6) Ms. Prager
5 did not supervise Mr. Abonal's bankruptcy services related to the
6 debtors; 7) Mr. Abonal provided legal-related services by
7 arranging for attorneys to appear with the debtors at their
8 § 341(a) meetings through a third-party service and preparing the
9 debtors' chapter 13 plan; 8) Mr. Abonal engaged in the
10 unauthorized practice of law; and 9) Mr. Abonal prepared the
11 debtors' bankruptcy documents in a manner that failed to disclose
12 his identity.

13 Mr. Abonal timely appealed.

14 15 **JURISDICTION**

16 The bankruptcy court had jurisdiction under 28 U.S.C.
17 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
18 § 158.

19 20 **ISSUES**¹²

21 (1) Did the bankruptcy court err in finding that Mr. Abonal

22
23 ¹² Although Mr. Abonal sets forth numerous issues on appeal,
24 we have distilled them down to two, given that he advances only
25 two main arguments in his opening and reply briefs.

26 One of the issues Mr. Abonal raises is the doubling of the
27 fines against him. However, he fails to discuss or argue this
28 issue further in his opening brief. Mr. Abonal therefore has
waived this issue. Dilley v. Gunn, 64 F.3d 1365, 1367 (9th Cir.
1995) ("Issues not raised in the opening brief usually are deemed
waived.").

1 was a bankruptcy petition preparer within the meaning of
2 § 110(a)(1)?

3 (2) Did the bankruptcy court err in finding that Mr. Abonal
4 violated § 110(g), (e)(2) and (f)?¹³

5 6 **STANDARDS OF REVIEW**

7 We review the bankruptcy court's decision to impose
8 penalties for violations of § 110 for an abuse of discretion.
9 Frankfort Digital Servs., Ltd. v. Neary (In re Reynoso), 315 B.R.
10 544, 550 (9th Cir. BAP 2004), aff'd, 477 F.3d 1117 (9th Cir.
11 2007) (citing Consumer Seven Corp. v. United States Trustee
12 (In re Fraga), 210 B.R. 812, 816 (9th Cir. BAP 1997)). We apply
13 a two-part test to determine objectively whether the bankruptcy
14 court abused its discretion. United States v. Hinkson, 585 F.3d
15 1247, 1261-62 (9th Cir. 2009) (en banc). First, we "determine de
16 novo whether the bankruptcy court identified the correct legal
17 rule to apply to the relief requested." Id. Second, we examine
18 the bankruptcy court's factual findings under the clearly
19 erroneous standard. Id. at 1252 & n.20. A bankruptcy court
20 abuses its discretion if it applied the wrong legal standard or
21

22
23 ¹³ Mr. Abonal also challenges the bankruptcy court's
24 findings under § 110(b)(1) and (2), (c)(1) and (h)(2) on the
25 sole, broad ground that, because he was not a bankruptcy petition
26 preparer, he was not required to make certain disclosures and to
27 take certain affirmative actions pursuant to § 110. As we
28 explain below, we determine that the bankruptcy court did not
clearly err in finding that Mr. Abonal was a bankruptcy petition
preparer. Because he does not advance any other argument
concerning those particular subsections of § 110, we need not go
farther in our analysis regarding them.

1 misapplied the correct legal standard or its factual findings
2 were illogical, implausible or without support in the record.
3 Trafficschool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th
4 Cir. 2011).

5 We review the bankruptcy court's fact findings concerning
6 violations of § 110 for clear error, Reynoso, 315 B.R. at 550,
7 and its conclusions of law de novo. Fraga, 210 B.R. at 816.

8 "Where there are two permissible views of the evidence, the
9 factfinder's choice between them cannot be clearly erroneous."
10 Duckett v. Godinez, 109 F.3d 533, 535 (9th Cir. 1997) (quoting
11 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 574
12 (1985)). Under the "clearly erroneous standard," we accept the
13 bankruptcy court's factual findings unless we have a definite and
14 firm conviction that a mistake has been committed. Greene v.
15 Savage (In re Greene), 583 F.3d 614, 618 (9th Cir. 2009).

16 We give special deference to the bankruptcy court's
17 credibility determinations. Duckett, 109 F.3d at 535. We apply
18 the same standard to its credibility determinations as we do to
19 its factual findings; we will not disturb such determinations
20 unless we have a definite and firm conviction that a mistake has
21 been committed. Id. (quoting Anderson, 470 U.S. at 574).

22 23 **DISCUSSION**

24 Bankruptcy petition preparers help pro se debtors in
25 preparing papers for filing in bankruptcy cases. In re Hill,
26 450 B.R. 885, 891 (9th Cir. BAP 2011). Although they are allowed
27 to provide such services to pro se debtors, "many of them also
28 attempt to provide legal advice and legal services to debtors."

1 Ferm v. United States Trustee (In re Crawford), 194 F.3d 954, 957
2 (9th Cir. 1999) (quoting H.R. Rep. No. 103-385, at 56 (1994),
3 reprinted in 1994 U.S.C.C.A.N. 3340, 3365). However, these
4 bankruptcy petition preparers "often lack the necessary legal
5 training and ethics regulation to provide such services in an
6 adequate and appropriate manner." Id. "These services may take
7 unfair advantage of persons who are ignorant of their rights both
8 inside and outside the bankruptcy system." Id.

9 Section 110 was created to regulate bankruptcy petition
10 preparers and to protect pro se debtors from abuse. Fraga,
11 210 B.R. at 818-19 (citations omitted). It sets forth "standards
12 and penalties pertaining to bankruptcy petition preparers."
13 Crawford, 194 F.3d at 957 (quoting H.R. Rep. No. 103-835, at 56
14 (1994), reprinted in 1994 U.S.C.C.A.N. 3340, 3365).

15 Mr. Abonal raises several arguments challenging the
16 bankruptcy court's rulings on the alleged § 110 violations.
17 However, he mainly contends that § 110 does not apply to him,
18 focusing on the definition of "bankruptcy petition preparer."

19 A. Meaning of bankruptcy petition preparer under § 110(a)(1)

20 Under § 110(a)(1), a bankruptcy petition preparer is "a
21 person, other than an attorney for the debtor or an employee of
22 such attorney under the direct supervision of such attorney, who
23 prepares for compensation a document for filing."¹⁴

24 Mr. Abonal repeats the same argument that he made before the
25

26 ¹⁴ Section 110(a)(2) defines a "document for filing" as "a
27 petition or any other document prepared for filing by a debtor in
28 a United States bankruptcy court or a United States district
court in connection with a case under this title."

1 bankruptcy court: that he was not a bankruptcy petition preparer
2 within the meaning of § 110(a)(1) because he was a paralegal
3 employed by Ms. Prager. He contends that an employee-employer
4 relationship existed between himself and Ms. Prager as evidenced
5 by: 1) her instructions and direct supervision of the bankruptcy
6 services he performed for the debtors; 2) her review and approval
7 of the debtors' bankruptcy documents; and 3) the fact that she
8 had the right to terminate his employment at will. Mr. Abonal
9 maintains that the declarations he submitted in support of his
10 argument provide unquestionable proof of that employee-employer
11 relationship. He principally relies on Ms. Prager's declaration,
12 touting its credibility because, he stresses, as an attorney, she
13 is an officer of the court who made the declaration under penalty
14 of perjury.

15 But Mr. Abonal seems to forget that the bankruptcy court did
16 not find credible any of the declarations he submitted. As we
17 noted earlier, we accord great deference to a bankruptcy court's
18 credibility determinations unless we are firmly and definitely
19 convinced that it erred in its determinations. See Duckett,
20 109 F.3d at 535. We have no such qualms here. In fact, we agree
21 with the UST that these declarations merely contain self-serving
22 statements.

23 More importantly, Mr. Abonal failed to submit any
24 documentary evidence establishing that he was Ms. Prager's
25 employee. He did not present any employment contract, W-2s, tax
26 returns - anything that would show that Ms. Prager employed him
27 as a paralegal.

28 Mr. Abonal insists that proof of his employment with

1 Ms. Prager is found in her constant direction, supervision,
2 review and approval of every single bankruptcy service he
3 performed for the debtors. We do not quibble with Ms. Prager's
4 claim that she was unable to be physically present when giving
5 Mr. Abonal such directions and instructions. But aside from his
6 and Ms. Prager's bald assertions, Mr. Abonal provided no other
7 evidence of Ms. Prager's direction and supervision. He could
8 have provided notes, memos, phone records, emails, letters or any
9 other written communication showing that Ms. Prager gave him
10 direction and provided supervision, but he did not provide any
11 such evidence.

12 Mr. Abonal attacks the sufficiency of the UST's evidence,
13 arguing that it failed to disprove that he was Ms. Prager's
14 employee. The UST not only submitted declarations, but, in
15 addition, it submitted portions of the debtors' testimony at the
16 § 341(a) meeting and a copy of Mr. Abonal's business card.
17 Mr. Abonal even acknowledged the information on his business
18 card.

19 Mr. Abonal makes much of the fact that he informed the
20 debtors that Ms. Prager would be their attorney. Mr. Abonal also
21 highlights the debtors' statement in their declaration that he
22 informed the debtors that an attorney would review their
23 bankruptcy documents before filing them with the bankruptcy
24 court. He further points out that the debtors signed the
25 electronic filing declaration, in which they declared, under
26 penalty of perjury, that they authorized their attorney to file
27 electronic versions of their bankruptcy documents.

28 This evidence does not wash away the evidence of the

1 debtors' firm belief that only Mr. Abonal was handling their
2 bankruptcy case. The debtors did sign the electronic filing
3 declaration. They also disclosed in their declaration that
4 Mr. Abonal informed them that Ms. Prager would review their
5 bankruptcy documents. But a review of bankruptcy documents by an
6 attorney does not necessarily translate into an understanding
7 that an attorney actually would handle their bankruptcy case.
8 Their belief is especially understandable, given that they never
9 once met or spoke with Ms. Prager and that they solely interacted
10 and dealt with Mr. Abonal. And Ms. Prager did not deny that she
11 never met or spoke with the debtors, her supposed clients. Even
12 Ms. Morris and Mr. Levy, the two attorneys who appeared at the
13 § 341(a) meetings in Ms. Prager's stead, did not speak with
14 Ms. Prager about the § 341(a) meetings; Ms. Morris and Mr. Levy
15 spoke with Mr. Abonal only.

16 In short, Mr. Abonal simply did not provide sufficient
17 evidence to overcome the UST's evidence that he was a bankruptcy
18 petition preparer. The bankruptcy court made choices in its
19 findings based on conflicting evidence, and we conclude that the
20 bankruptcy court did not err in finding that Mr. Abonal was a
21 bankruptcy petition preparer within the meaning of § 110(a)(1).

22 B. Violations of § 110(e)(2), (f) and (g)

23 Because it did not err in determining that Mr. Abonal was a
24 bankruptcy petition preparer under § 110(a)(1), the bankruptcy
25 court could apply the standards and penalties of § 110 to him.
26 We now address the bankruptcy court's determinations on each
27 contested violation of § 110.

1 1. Violation of § 110(e) (2)

2 Section 110(e) (2) (A) and (B) provide that a bankruptcy
3 petition preparer may not offer a potential bankruptcy debtor any
4 legal advice, including: whether to file a bankruptcy petition;
5 whether a chapter 7, 11, 12 or 13 case is appropriate; whether
6 the debtor's debts will be discharged; whether the debtor will be
7 able to retain his or her home or other assets; the tax
8 consequences of a bankruptcy case; whether to enter into a
9 reaffirmation agreement with a creditor; or concerning bankruptcy
10 procedures and rights.

11 Mr. Abonal claims that he did not give the debtors any legal
12 advice. All the information he provided to the debtors regarding
13 their bankruptcy case had been provided as Ms. Prager's paralegal
14 pursuant to her instructions and under her direct supervision.
15 He did not provide this information on his own.

16 As we noted above, Mr. Abonal did not submit any evidence,
17 aside from his and Ms. Prager's declarations, showing that he did
18 not provide legal advice on his own. He did not present any
19 written communications or other records indicating that
20 Ms. Prager had directed him to proffer legal advice on her
21 behalf. The bankruptcy court did not find the declarations
22 submitted by Mr. Abonal credible. It therefore did not clearly
23 err in finding that Mr. Abonal offered the debtors legal advice
24 in violation of § 110(e) (2).

25 2. Violation of § 110(f)

26 Section 110(f) provides that a bankruptcy petition preparer
27 shall not use the word "legal" or any similar term in any ads or
28 advertise under any category that includes the word "legal" or

1 any similar term. Under California Business & Professions Code
2 § 6452(a), a person cannot advertise as a paralegal unless he or
3 she performs services under an attorney's direction and
4 supervision. Also, the paralegal's business card must include
5 the name of the law firm where he or she is employed or a
6 statement that he or she is employed by or contracted with a
7 licensed attorney.

8 Mr. Abonal contends that he was allowed to hold himself out
9 as a paralegal on his business card because he worked under
10 Ms. Prager's direct supervision. However, as we explained above,
11 Mr. Abonal failed to submit sufficient evidence to demonstrate
12 that he was employed as a paralegal under Ms. Prager's direct
13 supervision.

14 Even assuming he was a paralegal employed by Ms. Prager,
15 Mr. Abonal failed to include any information on his business
16 cards pertaining to Ms. Prager as required under California
17 Business & Professions Code § 6452(a). We therefore conclude
18 that the bankruptcy court did not clearly err in finding that
19 Mr. Abonal had violated § 110(f) in using "paralegal" in the name
20 of his business on his business cards.

21 3. Violation of § 110(g)

22 Section 110(g) provides that a bankruptcy petition preparer
23 shall not collect or receive any payment from the debtor or on
24 his or her behalf for the court fees in connection with filing
25 the petition. Mr. Abonal argues that he did not violate § 110(g)
26 because he received payments from the debtors on Ms. Prager's
27 behalf pursuant to her instructions. These payments, he claims,
28 constituted her attorney's fees. Mr. Abonal then asserts that he

1 delivered these payments to Ms. Prager.

2 The UST submitted as evidence three receipts, one filled out
3 by Mr. Abonal and the other two issued by Bank of America. The
4 receipts all indicate that the payments were given to Mr. Abonal,
5 either personally or into his bank account.

6 Mr. Abonal did not effectively counter the UST's evidence.
7 Aside from his declarations, Mr. Abonal did not present any
8 evidence showing that: 1) Ms. Prager directed him to receive
9 these payments on her behalf, and 2) he delivered the funds to
10 Ms. Prager. He did not provide any notes, memos, letters,
11 deposit slips or any other written communications in support of
12 his contentions.

13 The bankruptcy court based its determination on the only
14 credible evidence it had before it: the receipts, the credit card
15 transaction search result and the debtors' declaration. We
16 therefore conclude that the bankruptcy court did not clearly err
17 in finding that Mr. Abonal violated § 110(g) by receiving payment
18 on the debtors' behalf for fees and for their chapter 7 filing
19 fee.

20
21 **CONCLUSION**

22 Based on the evidence before it, the bankruptcy court did
23 not clearly err in determining that Mr. Abonal was a bankruptcy
24 petition preparer within the meaning of § 110(a)(1). It moreover
25 did not clearly err in finding that, as a bankruptcy petition
26 preparer, he had violated § 110(e)(2), (f) and (g). We therefore
27 AFFIRM.