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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No.	CC-16-1172-KiFPa
)		
HALINA WOJCIK,)	Bk. No.	6:16-13228-SHY
)		
Debtor.)		
)		
_____)		
)		
MAGDELENA STRICKLAND,)		
)		
Appellant,)		
)	O P I N I O N	
v.)		
)		
U.S. TRUSTEE,)		
)		
Appellee.)		
_____)		

Submitted Without Oral Argument
on November 17, 2016

Filed - November 30, 2016

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

Honorable Scott H. Yun, Bankruptcy Judge, Presiding

Appearances: _____
Appellant Magdalena Strickland, pro se, on brief;
Russell Clementson on brief for appellee, the U.S.
Trustee.

Before: KIRSCHER, FARIS and PAPPAS,¹ Bankruptcy Judges.

¹ Hon. Jim D. Pappas, Bankruptcy Judge for the District of
Idaho, sitting by designation.

1 KIRSCHER, Bankruptcy Judge:

2

3 Appellant Magdalena Strickland, a bankruptcy petition
4 preparer² ("BPP"), appeals an order granting the motion of the
5 U.S. Trustee ("UST") under § 110³ to disgorge her petition
6 preparation fees and to impose fines and damages, totaling \$2,650.
7 We AFFIRM.

8

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

9

A. How Debtor and Strickland met

10 The facts are mostly undisputed. Strickland does not have a
11 law degree, she is not an attorney and she does not work under the
12 supervision of an attorney. She and her husband, who is also not
13 an attorney, own and operate "Low Cost Paralegal Services"
14 ("LCPS"), a sole proprietorship, in Las Vegas, Nevada. LCPS is
15 registered with the Nevada Secretary of State as a document
16 preparation service. Strickland holds an Associate of Arts degree
17 in Paralegal Studies and worked as a paralegal for law firms
18 before starting her business in 2009. Strickland confirmed that
19 despite her legal training, LCPS operates solely as a document
20 preparation service and thus is not required to work under the
21 supervision of a licensed attorney.

22 Chapter 7 debtor Halina Wojcik ("Debtor") contacted LCPS for
23 preparation of her chapter 7 bankruptcy petition. Debtor lives in

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26 ² Strickland does not dispute that she is a bankruptcy
petition preparer as defined in § 110(a).

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28 ³ Unless specified otherwise, all chapter, code and rule
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 California. She found Strickland and her bankruptcy petition
2 preparation services through LCPS by searching on the internet
3 using the word "paralegal." Strickland maintains a website,
4 www.lowcostparalegalsolutions.com, at which she promotes her
5 business. LCPS's website's home page reads: "Low Cost Paralegal
6 Services - The Lower Cost Alternative to Attorney Document
7 Preparation." It also reads: "If a [sic] issue ever arises,
8 please feel free to contact our paralegal for immediate
9 resolution." Finally, the website reads:

10 Knowing the difficulty of determining the procedure for
11 various legal actions for those not immersed in the legal
12 system, we have enjoyed being able to assist others
13 helping to locate and generate the paper work required
14 for various legal actions.

15 While the State of Nevada prohibits paralegals from
16 providing legal advice, in many cases the only assistance
17 needed is with the preparation of the documents and
18 filing; and for that purpose Low Cost Paralegal Services
19 is honored to be able to assist. We pride ourselves on
20 the work that has been and is being completed, on a daily
21 basis.

22 Shortly after viewing the website, Debtor called LCPS and
23 spoke with Strickland. Strickland informed Debtor over the phone
24 that she was not an attorney but could help her prepare and file
25 her bankruptcy documents. Strickland sent Debtor a questionnaire
26 to complete and return. Debtor completed the questionnaire and
27 faxed a copy back to Strickland. A few days later, Debtor met
28 with Strickland at her office in Las Vegas to sign her bankruptcy
29 documents. Debtor also executed a Document Preparation Services
30 Agreement, which stated in several places that LCPS and Strickland
31 were not able to give legal advice and could not accept money for
32 legal advice, and that any information provided through LCPS could
33 not be used for legal advice. Debtor paid LCPS \$125 for preparing

1 her bankruptcy documents and \$25 for requesting a credit report.

2 **B. The UST's motion under § 110**

3 In her chapter 7 bankruptcy petition and statement of
4 financial affairs, Debtor identified Strickland as the non-
5 attorney she paid to assist her in filling out her bankruptcy
6 forms. Strickland confirmed her role as Debtor's BPP in the (1)
7 Disclosure of Compensation of BPP (Form 2800) and (2) the
8 Declaration and Signature of the BPP (Form 119).

9 The UST moved under § 110(f), (h), (i) and (l) to disgorge
10 Strickland's fee of \$125,⁴ impose damages of \$2,000 and fine her
11 \$500 on the basis that Strickland violated § 110(f) by using the
12 word "legal" in advertising her business. The UST points out that
13 Strickland used the word "paralegal": (1) in connection with the
14 services she provided to Debtor; (2) in the name of her business;
15 (3) in the web address used by Strickland to promote her business;
16 and (4) in the web pages describing the services performed by her
17 business, including bankruptcy services. The UST contended that
18 this use violated the strict liability provisions of § 110(f).
19 The UST argued that Strickland's use of the term "paralegal" left
20 the impression that a debtor using her services would be receiving
21 the equivalent of attorney or legal services but at a lower cost,
22 not only the typing services permitted for BPPs. The UST argued
23 that Strickland's violation of § 110(f) subjected her to actual
24 damages to Debtor for the amount of her fee and the \$2,000

25 _____
26 ⁴ The amount Debtor paid to Strickland was reported as \$125
27 in the Disclosure of Compensation and as \$150 in Question 16 of
28 Debtor's Statement of Financial Affairs. The UST initially sought
disgorgement of the \$125 fee. However, in his reply brief he
requested that the entire \$150 paid to Strickland be disgorged.

1 mandated under § 110(h)(3)(B) and (i)(1), and a fine of \$500
2 payable to the UST under § 110(l)(1). A hearing was set for May
3 26, 2016.

4 Strickland opposed the UST's motion. She admitted to using
5 the word "paralegal" in advertising her business, but argued that
6 no lay person would believe LCPS was anything more than a document
7 preparation service, especially when considering the disclosures
8 she makes in person and on the phone with clients, in her email
9 tags, in her client agreements, on signs posted in her office, and
10 on her website stating that she is not an attorney and that
11 neither she nor LCPS can offer any legal advice or legal services.
12 For example, two signs with 12" letters posted in the LCPS office
13 state: "I AM NOT AN ATTORNEY IN THE STATE OF NEVADA. I AM NOT
14 LICENSED TO GIVE LEGAL ADVICE. I MAY NOT ACCEPT FEES FOR GIVING
15 ADVICE." Strickland further argued that her business name did not
16 use the word "legal" solely on its own, and thus would not give a
17 lay person the impression that the office is a legal service or
18 gives legal advice. Because Strickland was unable to travel to
19 California for the hearing, she requested to appear by telephone,
20 asking that the court contact her at the number provided.

21 In reply, the UST argued that Strickland's disclaimers of not
22 offering legal services or legal advice did not excuse her
23 prohibited use of the word "legal" in her advertising. In fact,
24 argued the UST, by repeatedly using the word "paralegal" and
25 promoting her experience levels, Strickland had knowingly
26 embellished the illusion to her clients that they will receive the

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1 essential legal assistance necessary to obtain bankruptcy relief.⁵

2 The hearing went forward on May 26, 2016. When entering
3 appearances, the bankruptcy court inquired if anyone for
4 Strickland was on the phone; no one was there. Acknowledging that
5 Strickland had asked to appear by telephone, the court noted that
6 although it has a liberal policy on telephonic appearances, which
7 is posted on the court's website, Strickland needed to contact
8 Court Call in order to appear by phone; the court was not going to
9 go outside its own procedure to call Strickland for the hearing.

10 In reviewing the merits of Strickland's opposition, the court
11 opined that it was not convincing. Strickland admitted to the
12 UST's central allegation, that she is "advertising legal or
13 paralegal services." In ruling in favor of the UST, the court
14 stated:

15 So my tentative ruling is to grant the motion. Disgorge
16 the fee of \$150. Statutory damages of [\$]2,000 and fine
17 of [\$]500.

18

19 So, I am granting the motion as set forth in the motion.
20 And the only variance is the, I'm not granting the
21 additional \$500 in fine that the U.S. Trustee requested
22 [in his reply for the unauthorized practice of law].

23 Hr'g Tr. (May 26, 2016) 3:8-10, 4:14-16.

24 The bankruptcy court entered an order in accordance with its
25 oral ruling on June 17, 2016. This timely appeal followed.

26 ⁵ In his reply, the UST added a claim against Strickland
27 under § 110(e)(2) for the unauthorized practice of law based on
28 Strickland's alleged "choosing" of Debtor's exemptions as under
§ 322 instead of § 522. Strickland argues on appeal that this was
a typographical error. In any event, the bankruptcy court
declined to consider the UST's added claim for lack of notice to
Strickland and did not award any damages on that basis.
Therefore, we do not address Strickland's arguments on this issue.

1 **II. JURISDICTION**

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

4 **III. ISSUES**

5 A. Did the bankruptcy court violate Strickland's procedural
6 due process rights by not telephoning her for the hearing?

7 B. Did the bankruptcy court err in finding that Strickland
8 violated § 110(f) or abuse its discretion by ordering disgorgement
9 and imposing statutory damages and fines?

10 **IV. STANDARDS OF REVIEW**

11 Whether procedures used by the bankruptcy court violated an
12 individual's due process rights is a mixed question of law and
13 fact that we review de novo. Wilborn v. Gallagher (In re
14 Wilborn), 205 B.R. 202, 206 (9th Cir. BAP 1996) (citing Rose v.
15 United States, 905 F.2d 1257, 1259 (9th Cir. 1990)).

16 The bankruptcy court's interpretation of the Code is a matter
17 of law, subject to de novo review. Id.

18 We review the bankruptcy court's imposition of fines under
19 § 110 for an abuse of discretion. Frankfort Dig. Servs., Ltd. v.
20 U.S. Trustee (In re Reynoso), 315 B.R. 544, 550 (9th Cir. BAP
21 2004), aff'd, 477 F.3d 1117 (9th Cir. 2007) (citing Consumer Seven
22 Corp. v. U.S. Tr. (In re Fraga), 210 B.R. 812, 816 (9th Cir. BAP
23 1997)). A bankruptcy court abuses its discretion if it applies an
24 incorrect legal standard or misapplies the correct legal standard,
25 or if its factual findings are illogical, implausible or
26 unsupported by evidence in the record. Trafficschool.com, Inc. v.
27 Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

28 We may affirm the bankruptcy court's order on any basis

1 supported by the record. See ASARCO, LLC v. Union Pac. R. Co.,
2 765 F.3d 999, 1004 (9th Cir. 2014).

3 **V. DISCUSSION**

4 **A. The bankruptcy court did not violate Strickland's procedural**
5 **due process rights.**

6 Due process is a relatively minimal standard that only
7 requires "notice reasonably calculated, under all the
8 circumstances, to apprise interested parties of the pendency of
9 the action and afford them an opportunity to present their
10 objections." Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S.
11 306, 314 (1950); Tennant v. Rojas (In re Tennant), 318 B.R. 860,
12 870 (9th Cir. BAP 2004) (procedural due process requires notice
13 and an opportunity to be heard). The UST's moving papers clearly
14 stated what Code sections he believed Strickland violated and what
15 relief he was seeking. He provided proper notice to Strickland of
16 the hearing date and time and notice under Local Rule 9013-1(f)
17 that any objection had to be served within 14 days prior to the
18 hearing. Strickland timely filed an opposition to the motion,
19 defending her position.

20 Strickland contends the bankruptcy court erred by refusing to
21 call her for the hearing, which appears to be a procedural due
22 process argument. She argues that no "Court Call" directions were
23 ever given to her and that no such "Court Call rule" exists on the
24 website for the Bankruptcy Court for the Central District of
25 California. Strickland contends therefore that she had no way of
26 knowing a prepayment to Court Call was required prior to being
27 allowed to be heard at oral argument.

28 Local Rule 9074-1, which is available on the bankruptcy

1 court's website, discusses telephonic appearance for court
2 hearings and provides that "[a] party who wishes to appear
3 telephonically at a court hearing must consult the court's web
4 site to determine whether a telephonic appearance on a particular
5 matter is permissible and to obtain the judge's procedure for
6 requesting and making a telephonic appearance." Telephonic
7 appearance instructions are available for each bankruptcy judge on
8 the court's website. They provide detailed, step-by-step
9 instructions on how to appear by telephone, including contact
10 information for Court Call. If Strickland was unsure where to
11 look on the court's website, running a search for "telephonic
12 appearance" in the website's search engine leads one to the
13 judge's procedures.

14 As a litigant, it was Strickland's responsibility to
15 determine whether and how she could appear by phone. Her
16 unfamiliarity with the rules for a telephonic appearance is no
17 excuse; the court not calling her for the hearing certainly does
18 not constitute a violation of her due process rights. Pro se
19 litigants are not excused from complying with procedural rules.
20 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), overruled on
21 other grounds, Lacey v. Maricopa Cty., 693 F.3d 896 (9th Cir.
22 2012) ("Pro se litigants must follow the same rules of procedure
23 that govern other litigants."). Strickland's acknowledgment of
24 her extensive paralegal training is an even more compelling reason
25 to expect her to comply with the local rules for participating in
26 telephonic hearings. The bankruptcy court therefore acted within
27 its discretion to enforce the court's local rules and procedures
28 and to decline to call Strickland as she requested. See Simmons

1 v. Navajo Cty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010) (trial
2 court has broad discretion in interpreting and applying local
3 rules).

4 Moreover, Strickland has not shown how she was prejudiced
5 from what she considers were procedural deficiencies. See Rosson
6 v. Fitzgerald (In re Rosson), 545 F.3d 764, 777 (9th Cir. 2008)
7 ("Because there is no reason to think that, given appropriate
8 notice and a hearing, Rosson would have said anything that could
9 have made a difference, Rosson was not prejudiced by any
10 procedural deficiency."). Strickland has not articulated what she
11 could have said or done at the hearing that would have changed the
12 outcome. As we explain below, § 110(f) is a strict liability
13 provision and Strickland admitted to violating it in her
14 opposition. She advanced only the legal argument that use of the
15 word "paralegal" did not violate § 110(f). The court found that
16 it did, as do we. Thus, nothing she would have said or done at
17 the hearing had the court called her as she requested would have
18 changed the outcome.

19 **B. The bankruptcy court did not err in determining that use of**
20 **the word "paralegal" violates § 110(f) or abuse its**
21 **discretion in fining Strickland.**

22 Perceiving a need to curtail widespread fraud, abuse and the
23 unauthorized practice of law, Congress enacted legislation in 1994
24 seeking to restrict the activities of non-attorney BPPs. See FERM
25 v. U.S. Tr. (In re Crawford), 194 F.3d 954, 957 (9th Cir. 1999).
26 The centerpiece of that legislation was § 110. Id. Section 110
27 was designed to prevent BPPs from taking "unfair advantage of
28 persons who are ignorant of their rights both inside and outside
the bankruptcy system." Hastings v. U.S. Tr. (In re Agyekum), 225

1 B.R. 695, 701 n.7 (9th Cir. BAP 1998) (quoting H.R. Rep. 103-834,
2 at 40-41(1994)). Section 110 imposes a number of requirements and
3 restrictions on BPPs and also imposes fines for noncompliance.
4 See In re Branch, 504 B.R. 634, 639-40 (Bankr. E.D. Cal. 2014)
5 (explaining requirements, restrictions and fines). The U.S.
6 Trustee has standing to file a motion to request turnover of fees,
7 statutory damages and fines. § 110(h)(4), (i)(1) and (l)(3).

8 Section 110(f) provides that a BPP "shall not use the word
9 'legal' or **any similar term** in any advertisements, or advertise
10 under any category that includes the word 'legal' or **any similar**
11 **term.**" (Emphasis added.) Strickland raises the same arguments
12 here that she did before the bankruptcy court, that using the name
13 "Low Cost Paralegal Services" would not mislead the public into
14 thinking she offered legal services as the UST alleged, especially
15 when considering her disclaimers, and that her business name does
16 not contain the word "legal" solely on its own. Thus, argues
17 Strickland, she did not violate § 110(f). We disagree.

18 Several courts, including the Panel, have held that a BPP's
19 use of the word "paralegal" violates § 110(f), not only because it
20 actually contains the prohibited word "legal", but also because it
21 promotes the BPP's specialized legal expertise or knowledge and
22 misleads lay persons into believing legal services are being
23 provided. U.S. Tr. v. Burton (In re Rosario), 493 B.R. 292, 349
24 (Bankr. D. Mass. 2013); U.S. Tr. v. Summerrain (In re Avery), 280
25 B.R. 523, 530 (Bankr. D. Colo. 2002) (BPP who does business under
26 trade name incorporating the word "paralegal" and advertises trade
27 name violates § 110(f)); In re Bush, 275 B.R. 69, 82 (Bankr. D.
28 Idaho 2002) (holding that BPP's use of the word "legal" within the

1 term "paralegal" on a sign in his office violated § 110(f)); In re
2 Moffett, 263 B.R. 805, 813 (Bankr. W.D. Ky. 2001) (holding that a
3 trained paralegal working as a BPP violated § 110(f) by using the
4 word "paralegal" on her business cards); In re Gomez, 259 B.R.
5 379, 385 (Bankr. D. Colo. 2001) (holding that use of "paralegal"
6 trade name in advertisements violates the letter and spirit of
7 § 110(f)); Fessenden v. Ireland (In re Hobbs), 213 B.R. 207, 215
8 (Bankr. D. Maine 1997) (use of the term "paralegal," a "similar
9 term" to "legal" under § 110(f), fosters consumer confusion of the
10 character Congress intended to eliminate); In re Burdick, 191 B.R.
11 529, 535 (Bankr. N.D.N.Y. 1996) (BPP's use of the word "paralegal"
12 in her Pennysaver ads violated § 110(f) because paralegal is a
13 "similar term" that falls within the statute). See also Abonal v.
14 U.S. Tr. (In re Jackson), 2014 WL 5575293, at *10 (9th Cir. Nov.
15 3, 2014) (BPP with business name "Abonal Paralegal Services" who
16 failed to prove he was a paralegal acting under the direct
17 supervision of an attorney violated § 110(f) by using the term
18 "paralegal" in his business name and business cards).

19 Contrary to Strickland's argument, the plain language of
20 § 110(f) prohibits **any** use of the word "legal" in an advertisement
21 by a non-attorney BPP, including the word "paralegal." "The
22 statute does not say that some uses of the word 'legal' are
23 acceptable through context, modifier, or otherwise. The
24 prohibition is absolute and unambiguous." In re Farness, 244 B.R.
25 464, 468 (Bankr. D. Idaho 2000). Therefore, whether Debtor was
26 actually misled into thinking Strickland offered legal advice or
27 legal services is not the test for whether Strickland violated
28 § 110(f). Section 110(f) is a "strict liability" provision.

1 Bolen v. King (In re Howard), 351 B.R. 371, 380 (Bankr. W.D. La.
2 2005); In re Gomez, 259 B.R. at 385. Further, her claimed
3 adherence to Nevada law also lacks merit; § 110(f) is a federal
4 bankruptcy statute, not a state statute.

5 Strickland's use of the business name "Low Cost Paralegal
6 Services" violates § 110(f). So too does her use of the terms
7 "paralegal" and "legal" throughout her website in connection with
8 advertising her bankruptcy preparation services. In re Reynoso,
9 477 F.3d at 1124 (BPP's use of the words "law" and "legal" on
10 BPP's website violated § 110(f)). The bankruptcy court did not
11 err in determining that Strickland violated § 110(f).

12 A BPP who violates § 110, including subsection (f), "or
13 commits any act that the court finds to be fraudulent, unfair, or
14 deceptive" shall be ordered by the court to pay to the debtor,

15 (A) the debtor's actual damages;

16 (B) the greater of-

17 (i) \$2,000; or

18 (ii) twice the amount paid by the debtor to the
19 bankruptcy petition preparer for the preparer's
services; and

20 (C) reasonable attorney's fees and costs in moving for
damages under [11 U.S.C. § 110(i)].

21 § 110(i)(1). In addition, under § 110(h)(3)(B), the fees charged
22 by a BPP who fails to comply with subsection (f) "may" be
23 forfeited. Finally, § 110(l)(1) provides that a BPP who fails to
24 comply with subsection (f) "may" be fined not more than \$500 for
25 each such failure.

26 The bankruptcy court did not find that Strickland's conduct
27 was fraudulent, unfair or deceptive. But she did nonetheless
28 violate § 110(f), which is enough to mandate damages under

1 § 110(i)(1). The use of the word "shall" in § 110(i)(1) indicates
2 that the bankruptcy court has no discretion in deciding whether to
3 impose statutory damages of \$2,000 once it found a violation of
4 § 110(f). Even if no actual damages are requested, the court must
5 award statutory damages which are computed to be the **greater of**
6 **either** (1) \$2,000 or (2) twice the amount paid by the debtor to
7 the BPP for his or her services (\$300 here). In re Branch, 504
8 B.R. at 648. As such, the court did not err in awarding the
9 \$2,000 in damages to Debtor.

10 The disgorgement of the \$150 fee Debtor paid to Strickland
11 and the \$500 fine are, however, discretionary, with Congress's use
12 of the term "may" in both § 110(h)(3)(B) and (l)(1). See id.
13 (court is permitted, but not required, to order the forfeiture of
14 fees or impose statutory fines when violation of § 110(f) has
15 occurred). The bankruptcy court ordered Strickland to disgorge
16 her fee of \$150 and fined her \$500. The record supports these
17 discretionary awards. Given Strickland's clear violation of
18 § 110(f) with her use of the word "paralegal" in advertising since
19 at least 2009, the bankruptcy court was within its discretion to
20 order the disgorgement of her \$150 fee under § 110(i)(1) and to
21 fine her the maximum of \$500 under § 110(l)(1).

22 **VI. CONCLUSION**

23 For the foregoing reasons, we AFFIRM.

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