

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Donald F. Walton,
United States Trustee
for Region 21,

Case No. 8:09-mp-00010-MGW

Plaintiff,

vs.

Clark & Washington, P.C.,

Defendant.

FINAL JUDGMENT IN FAVOR OF THE UNITED STATES TRUSTEE

THIS PROCEEDING came before the Court on Clark & Washington, P.C.'s ("Defendant") *Motion for Summary Judgment* (Doc. No. 32) and the United States Trustee's ("Plaintiff") *Response* thereto (Doc. Nos. 37 and 38). On April 19, 2010, the Court issued a *Notice of Hearing* on the motion for summary judgment in which it indicated its intent to consider, on its own motion, the issue of summary judgment with respect to both parties to this proceeding both in whole and in part (Doc. No. 35). The Court conducted a hearing on the issue of summary judgment in this proceeding on April 26, 2010, as well as a subsequent pre-trial conference in this proceeding on June 16, 2010. Having considered the pleadings submitted by both parties to this proceeding, together with the arguments of counsel, and consistent with its Memorandum Opinion entered on July 12, 2011 (Doc. No. 45), the Court determines that the entry of summary judgment in favor of the Plaintiff is appropriate. Accordingly, it is

ORDERED:

1. Defendant's Motion for Summary Judgment is DENIED.
2. Summary Judgment is entered in favor of the Plaintiff.
3. Defendant's acceptance of post-dated checks from its bankruptcy clients, as compensation for Defendant's incurring pre-petition attorneys' fees on behalf of those clients, creates a pre-petition claim that is subject to the automatic stay imposed under 11 U.S.C. § 362(a), and any act to negotiate those pre-petition, post-dated checks violates either the automatic stay imposed under 11 U.S.C. § 362(a) or the discharge injunction imposed under 11 U.S.C. § 524(a)(2).
4. Defendant's Attorney-Client Agreements that were in existence on or before April 26, 2010, create a conflict of interest between the Defendant and its bankruptcy clients.
5. Effective April 26, 2010, the Defendant shall no longer accept post-dated checks from its bankruptcy clients as compensation for pre-petition attorneys' fees incurred by the Defendant on behalf of those clients.
6. To the extent the Defendant possesses any post-dated checks tendered to it by a bankruptcy client on or before April 26, 2010, for pre-petition work performed on behalf of that client, the Defendant shall not negotiate or subsequently deposit those checks. Instead, the Defendant shall create a letter, in consultation with the Plaintiff, informing the impacted client of the Court's ruling, and shall mail a copy of that letter to the impacted client.
7. To the extent the Defendant has previously negotiated, and deposited for its benefit, any post-dated checks in its possession as of April 26, 2010, for pre-petition work performed on behalf of the client, upon request of the impacted client who responded to the letter

identified in paragraph 6 of this Final Judgment, the Defendant shall return all funds received to the impacted client making such request.

8. Notwithstanding the requirements set forth in paragraphs 5, 6 and 7 of this Order, any arrangement for a non-debtor third-party to pay, or agree to pay any attorneys' fees owed to the Defendant by a debtor subject to the jurisdiction of this Court, if otherwise allowed under applicable non-bankruptcy law and properly disclosed pursuant to applicable Bankruptcy Code and Rule provisions, shall be an agreement solely between the Defendant and the non-debtor third-party, and the debtor shall in no way be responsible for such an arrangement.

9. This Final Judgment is entered without prejudice to the Plaintiff's ability to enforce any provisions of the Bankruptcy Code, Bankruptcy Rules, and other applicable law.

10. This Court reserves jurisdiction to enforce all provisions of this Final Judgment and its accompanying Memorandum Opinion.

DONE and ORDERED in Chambers at Tampa, Florida, on July 12, 2011.



Michael G. Williamson
United States Bankruptcy Judge

Copies to be provided via CM/ECF to:

Denise E. Barnett, Esq.
Attorney for United States Trustee

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