

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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**IN RE:**

**TIMOTHY & VALERIE WALKER  
OLLIE DUNHAM  
JAMES SPAMPINATO**

**BK NO.      90-21863 Chp. 7  
                 91-21328 Chp. 7  
                 92-23303 Chp. 7**

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**Debtor(s).**

**DECISION AND ORDER**

**BACKGROUND**

In each of these Chapter 7 cases the Debtors are or were represented by Willie R. Felton, Esq. ("Felton"), an attorney who regularly practices in this Court and who advertises his services to the public in the area of bankruptcy in both local telephone directories and television advertisements.

In July 1990, a Standing Order was entered in this District concerning Chapter 7 and 13 cases (the "Standing Order"). The Order, signed by each of the then Bankruptcy Judges of the Western District of New York, requires all attorneys who represent Chapter 7 and 13 debtors in this District to attend and represent those debtors at the Section 341 Meeting of Creditors as a basic service. Felton, an attorney who regularly practices in this Court, is aware of this requirement of the Standing Order.

In each of these cases Felton failed to appear at the regularly scheduled Section 341 Meeting to represent the debtor. There is no evidence that Felton contacted the Office of the U.S. Trustee (the "U.S. Trustee") or the Chapter 7 trustee (the "Trustee") assigned to the case to advise them of the inability of the debtors or himself to attend the meeting, or that he notified creditors that there may be a need for an adjourned Section 341 Meeting for this reason.

The U.S. Trustee moved to dismiss the Walker and Dunham cases, because, in those cases, the debtors also failed to appear at the Section 341 Meeting. However, on the return date, the U.S. Trustee agreed to a conditional order to allow these debtors to attend an adjourned Section 341 Meeting. In the Spampinato case, the debtor did appear at his Section 341 Meeting without Mr. Felton, and the Trustee conducted and closed the meeting.

The U.S. Trustee also moved in each case for an order reducing Felton's attorney's fees as excessive, pursuant to Section 329, and directing Felton to pay \$50.00 to each Trustee in the Walker and Dunham cases to compensate him for the unnecessary additional effort required to prepare for an adjourned Section 341 Meeting. In the Spampinato case, the U.S. Trustee requested this payment to compensate the Trustee for the additional time required to conduct the Section 341 Meeting at which the debtor proceeded without an attorney.

Felton did not interpose any answering papers in connection with the U.S. Trustee's motions, and he did not appear at any of the hearings held in connection with the motions.

In its motion papers, the U.S. Trustee advised the Court that over the previous eight months Felton had represented debtors in ten separate cases where Section 341 Meetings were scheduled prior to the hearing on the pending motions. In those ten cases, Felton had appeared at only four of the ten Section 341 Meetings, and in one of the cases he had also failed to appear at an adjourned meeting.

On the return date of the U.S. Trustee's motions, each of the debtors and the U.S. Trustee appeared and was heard, and in each case the Court reduced Felton's attorney's fees in whole or in part and reserved on the request for a payment to the Chapter 7 Trustee.

## **DISCUSSION**

In its motion and Memorandum of Law, the U.S. Trustee urges the Court to direct Felton to pay \$50.00 to the Trustee in each of these cases to both compensate the Trustee for the additional effort necessitated by Felton's failure to appear at the Section 341 Meeting and to insure that in the future Felton does what is required of him as an attorney and an officer of the court to properly represent his clients and to cooperate with the trustee, the U.S. Trustee and the Bankruptcy Court to bring about the orderly, efficient and cost-effective prosecution of routine Chapter 7 and 13 cases.

In an effort to fit the requested relief into one of the traditional categories utilized by courts to deal with unacceptable conduct, the U.S. Trustee's motions request that Felton be held in contempt of the provisions of the Standing Order or that the Court impose sanctions. Labels and convenient or inconvenient categories aside, the U.S. Trustee is simply requesting that the Court issue a very necessary and practical order to compensate the Trustees for unnecessary additional work and to insure that Felton's unacceptable conduct does not continue in the future.<sup>1</sup>

In these cases, Felton's failure to appear at the Section 341 Meetings further demonstrates a clear pattern of failure to attend Section 341 Meetings, which are purely administrative and nonadversarial proceedings. As correctly pointed out by the U.S. Trustee, these failures and failures like them result in unnecessary hearings and motions, such as motions to dismiss, which take up the valuable time of the trustees, U.S. Trustee, creditors and the Bankruptcy Court which must expend both administrative and judicial time to process and hear such motions.

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<sup>1</sup> To enter such a reasonable and necessary order under these facts and circumstances as the exercise of a contempt power or the awarding of a sanction may only confuse matters.

Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C.S. §105(a) (1993). The legislative history to Section 105(a), when it was amended in 1986, indicates an understanding that: "[the amendment] allows a bankruptcy court to take any action on its own, or to make any necessary determination to prevent an abuse of process and to help expedite a case in a proper and justified manner." 132 Cong. Rec. S5092 (daily ed. Oct. 3, 1986) (statement of Sen. Hatch).

This Court believes that under Section 105 it has not only the power but the obligation to make such orders as are necessary and appropriate to carry out the provisions of the Bankruptcy Code and Rules and to insure that an orderly, efficient and cost-effective Bankruptcy System is provided to the public which utilizes and funds it. Bankruptcy Rule 1001 reinforces this by providing, "These rules shall be construed to secure the just, speedy and inexpensive determination of every case and proceeding."

The request that Felton be directed to pay the nominal amount of \$50.00 per case for an initial offense is a reasonable request by the U.S. Trustee<sup>2</sup> and granting it is within the sound discretion of the Bankruptcy Court in the exercise of its powers and obligations under Section 105.

Felton has demonstrated a pattern of not appearing at Section 341 Meetings. As a result he has failed in his responsibilities to his clients and as an officer of the court. He has not come forward with

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<sup>2</sup>On numerous occasions this Court has indicated that, when appropriate, it will fully support the actions of the U.S. Trustee to insure the orderly administration of bankruptcy proceedings.

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any reasonable explanation for this pattern of nonappearance or for his failure to appear in any of these specific cases.

**CONCLUSION**

Felton is directed to pay the amount of \$50.00 to the Trustee in the Dunham and Walker cases. In the Spampinato case, the U.S. Trustee's request for a payment to the Trustee is denied. Spampinato appeared at the originally scheduled Section 341 Meeting which was conducted at that time and closed. Although the Trustee may have had to spend more time at the meeting than if Felton had appeared, he most likely did not spend more time than he would have if the debtor had filed pro se.

**IT IS SO ORDERED.**

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**HON. JOHN C. NINFO, II**  
**UNITED STATES BANKRUPTCY JUDGE**

**Dated: June 29, 1993**