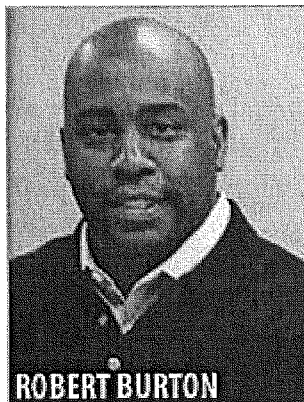


## Bankruptcy decision slams unauthorized practice of law

by Brandon Gee

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ROBERT BURTON

In a 100-page reproach of a Lawrence petition preparer, U.S. Bankruptcy Court Judge Henry J. Boroff has issued a strong warning against the unauthorized practice of law and articulated a restrictive interpretation of the work non-attorney petition preparers are allowed to conduct on behalf of debtors.

Boroff fined and sanctioned Robert R. Burton, the owner of Pinnacle Financial Consulting, for violating 11 U.S.C. §110, a consumer protection measure in the federal Bankruptcy Code that governs the conduct of non-lawyers who prepare and file bankruptcy documents for compensation.

Burton and Pinnacle Financial were ordered to pay a total of \$35,000 in fines to the U.S. trustee and disgorge fees and damages totaling \$18,000 to six debtors.

"The unauthorized practice of law by a nonattorney bankruptcy petition preparer constitutes a fraudulent, unfair, or deceptive practice within the meaning of §110(i)(1)," Boroff wrote.

"That unauthorized legal practice is made even more misleading when the petition preparer

tells the client that he or she is not an attorney and cannot give legal advice, but then proceeds to do just that. It is especially troubling when the information provided by the bankruptcy petition preparer is flatly wrong."

Bankruptcy lawyers applauded the Office of the U.S. Trustee for prosecuting the case against Burton, a law school graduate, and Pinnacle. They said Boroff's decision will be influential as both a guide and a deterrent going forward.

"I think it very much stands as a warning to other petition preparers where the line is — and not to cross it," said John T. Morrier, a partner at Casner & Edwards and co-chairman of the Boston Bar Association's Bankruptcy Section.

Burton, meanwhile, said the decision is too harsh, will eliminate low-cost alternatives for those who cannot afford a lawyer, and interprets §110 so restrictively as to render any petition-preparation business untenable.

"I think it was a very anti-business decision," Burton said. "Most attorneys know most of these clients — but for me — wouldn't have been able to file for bankruptcy."

Burton was represented by Darrell Mook of Donovan Hatem in Boston. Mook did not respond to multiple requests for comment. The trustee's office declined an interview invitation.

The 101-page decision is In Re: Rosario, Felix, et al., Lawyers Weekly No. 04-042-13. [The full text of the ruling can be found by clicking here.](#)

### The 'Pinnacle System'

According to Boroff's decision, Burton and Pinnacle began preparing bankruptcy petitions in 2007 or 2008. While Burton publicly touted the fact that he graduated from law school, neither his business card nor website noted that he was not licensed to practice law. Clients, however, were asked to read and sign a disclosure form, in both English and Spanish, which stated that Pinnacle was not a law firm and its employees were not attorneys who could give legal advice.

According to testimony in the case, when hired to prepare a bankruptcy petition, the defendants requested various financial documents from clients and obtained copies of their credit reports. The clients were then provided with written materials pertaining to bankruptcy laws, processes, forms and procedures, and directed to websites where they could research property values and obtain other information to help answer bankruptcy petition questions.

While Burton claimed he and clients went through petitions line by line "with Burton entering information solely at the client's direction," Boroff noted that evidence presented at trial showed that was not the case.

For example, Boroff found that Burton compiled information from the clients' credit reports and other documents to enter himself; that Pinnacle employees advised debtors on how to value their property; and that Burton would discuss and summarize client materials and answer clients' questions.

Boroff ruled that "offering anything more than typing, data entry or photocopying services is in violation of §110" and that, on bankruptcy petition forms, "virtually every entry requires some legal determination."

"Here, despite the courts' continued and vociferous reiteration that §110 is clearly intended to circumscribe, and not legitimize, petition preparation activities, the Defendants have persisted in arguing that the 'Pinnacle System' represents a professionalization of petition preparation," Boroff wrote. "Thus, the Defendants assert, allowing them to continue preparing bankruptcy petitions in the manner they have described is good public policy, because many of their clients would otherwise be unable to obtain filing assistance, owing to financial and language barriers. This Court, as have many others, recognizes these problems which are and have been difficult to overcome. The legal community has

not to provide them with an unauthorized, undereducated, and largely unregulated group of legal service providers."

Boroff determined that testimony by Pinnacle employees "appeared scripted and rife with contradictions"; that "Burton's testimony in particular lacked credibility, laced as it was with condescension toward counsel for the Trustee"; and that "while some of Burton's testimony may have been truthful, it was largely contrived, either before trial or on the spot, to avoid the potential for ramifications of his business practices."

### **Stepped-up enforcement**

The adversary proceeding against Burton in Bankruptcy Court is part of the trustee program's increased focus on petition preparers.

While pro se petitions increased 40 percent from fiscal year 2008 to 2012, from 6.5 percent to 9.1 percent of total bankruptcy filings, the number of U.S. trustee actions against bankruptcy petition preparers increased 230.5 percent over the same time period. In fiscal year 2012, 552 such actions were filed with a 97.3 percent success rate, \$1.7 million in fines levied and 152 injunctions, according to the U.S. Trustee Program's annual report.

Bankruptcy attorney Nicholas F. Ortiz of Ortiz & O'Donnell in Boston said the U.S. trustee should continue to "prioritize bringing more enforcement actions or these businesses will continue to thrive."

Ortiz said Boroff's decision recognizes that petition preparers are rarely just "typists."

"In Latino communities, the popular term 'notario' is especially troublesome due to the differences between the meaning of 'notary' both here and in certain Latin American countries," Ortiz said. "There is little recourse for a consumer who loses property or has his case dismissed due to choosing a non-attorney petition preparer. Ethical attorneys also shouldn't face unfair, unlawful and generally unaccountable competition from those operating outside the boundaries of the law."

While Burton complains that Boroff's ruling makes it virtually impossible for non-attorneys to help debtors prepare bankruptcy petitions for compensation, lawyers interviewed for this story suggested that is probably the way it should be.

"Almost everything is the practice of law if you're preparing petitions," said Rockland solo Ann Brennan, co-chair of the consumer sub-committee for the BBA's Bankruptcy Steering Committee. "For example, exemption elections are the hardest part of a Chapter 7 petition. Why do you need a petition preparer if they can't help you with that?"

Morrier said that does not mean that debtors of modest means are out of luck. He noted Boroff's finding in the Pinnacle case that "the fees charged by the Defendants nearly equal, and in some cases exceed, the fee required to obtain representation in a Chapter 7 case."

"The extent of relief a client can get in a bankruptcy case really depends on adequately presenting the case at the very beginning," Morrier said. "The scope of the services that clients think they're getting and the services [petition preparers] can provide don't always match up."

In his opinion, Boroff said that by advertising his legal education, Burton misled clients into believing that they would receive the benefit of legal expertise, knowledge and skill that he could not legally provide. When confronted with his violations, Boroff said, Burton became obstinate and flippant.

While he has enjoined him from preparing any future bankruptcy petitions in Massachusetts, Boroff said he would entertain a future petition to lift the injunction if Burton can prove that he has rectified the deficiencies in his practices.

### **Sidebar: Legal troubles for petition preparer far from over**

In person, Robert R. Burton's composed and confident manner is both convincing and disarming.

During an interview at the offices of Pinnacle Holdings, which he said is the parent company for Pinnacle Financial Consulting and other endeavors, the Lawrence bankruptcy petition preparer is quick to say that he respects Judge Henry J. Boroff and his ruling in *In Re: Rosario, Felix, et al.*, that he persisted with the case in hopes of receiving guidance on what he is allowed to do as a petition preparer, and that Boroff's judgments about his demeanor and credibility were misperceptions.

"I think he got a wrong read of me," said Burton, who was taken to task by the bankruptcy judge. "I'm passionate about what I'm doing. But I think who [Boroff's] really hurting is pro se debtors."

Pinnacle Holdings is located in Riverwalk Properties, a redeveloped mill on the Merrimack River in Lawrence that is home to a variety of businesses and government offices. Pinnacle, strangely, is not listed in the property's directories. Burton said he conducted the petition preparation work in two separate downtown Lawrence locations that are now closed.

In shiny wingtip oxfords and a shirt with a monogrammed cuff, Burton said that petition preparation "was a small portion of our business, but I did it because I saw a huge need" and that "most of our clients have been very happy with us."

Burton's claims, however, were immediately undermined by further reporting — even during attempts to find sympathetic sources.

his work and stated motivation to help a similar population, the staff at NLS do not appear to be kindred spirits. In fact, NLS attorney Marc W. Potvin said he could not comment because the organization has notified Burton of its intent to sue him.

A former classmate of Burton's at the Massachusetts School of Law in Andover also did not defend him.

"One of my clients was robbed by them," were the first words out of Lamya A. Forghany's mouth when a reporter called to ask about Burton and Pinnacle.

Forghany, a Lawrence bankruptcy attorney, said she accepted the client pro bono on a referral from Merrimack Valley Legal Services. According to Forghany, her client had gone to Burton for help with her mortgage. Burton allegedly took the client's money, but made no effort to obtain a home loan modification for her. When the client got a foreclosure notice, Forghany said, Burton pressured the woman to file a Chapter 13 bankruptcy.

Burton allegedly accepted more fees, but the bankruptcy case was dismissed and the client ultimately lost her house. Forghany said her client gave Burton a total of \$4,000 to \$5,000.

The most damning condemnation of Burton, however, can be found at Suffolk Superior Court, where Attorney General Martha Coakley is suing Burton and Pinnacle for unfair and deceptive acts and practices in connection with foreclosure-related services and practicing law without a license.

While Boroff's opinion details Burton's technical violations of the Bankruptcy Code, the commonwealth's lawsuit impugns his very motivations as well, alleging that he targeted minority and non-native English speakers desperate to save their homes from foreclosure.

"After receiving advanced payment, Defendants often fail to take any action to negotiate a modification, or are otherwise unable to successfully negotiate any modification to the homeowner's mortgage loan," the complaint against Burton states. "When their loan modification efforts fail, sometimes just days before the distressed homeowner's home is scheduled to be sold at foreclosure, Defendants pressure distressed homeowners into paying Defendants thousands of dollars to file bankruptcy on their behalf in order to delay the foreclosure sale. Defendants' bankruptcy filings on behalf of consumers are often incomplete or consist of erroneous paperwork, ultimately resulting in the dismissal of the bankruptcy proceedings. Further, Defendants refuse to refund any fees despite having failed to provide any tangible benefit to homeowners."

The complaint alleges similar tactics were used in investment schemes.

Burton's attorney, Darrell Mook of Donovan Hatem in Boston, did not respond to multiple requests for comment. In court filings, Burton denies the allegations against him, claiming that the alleged victims are vastly outnumbered by satisfied customers, that any negative outcomes were the fault of the alleged victims, and that fee arrangements and Burton's status as a non-attorney were articulated clearly in documents the alleged victims signed.

During the in-person interview, Burton claimed he shut down his petition-preparation business long before Boroff issued the May 29 opinion enjoining him from such work because he believed the Office of the U.S. Trustee was out to get him and that he would spend more money in legal fees defending himself than he would earn from petition work.

He failed to mention that Superior Court Judge Elizabeth M. Fahey already had enjoined him from "soliciting and providing loan modification, legal, bankruptcy, and investment services" all the way back in March.

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