

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
DANNIELLE RIVERA) CASE NO. 07-10905
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO REINSTATE

At Fort Wayne, Indiana, on April 13, 2007.

This case was dismissed on April 10, 2007, due to the debtor's failure to file a scanned copy of the originally signed signature pages as required by the court's order authorizing electronic case filing. Fifth Amended Order Authorizing Electronic Case Filing ¶ 11. See also, In re King, 2006 WL 1994679 *4 (Bankr. N.D. Ind. 2006). The debtor then filed a motion asking the court for relief from the judgment, to vacate the order of dismissal and reinstate this case.¹ It is that motion which is presently before the court.

To the extent the debtors are arguing that the failure to file the required signature pages constituted excusable neglect, under to Rule 60(b) of the Federal Rules of Civil Procedure, that argument fails. Determinations of excusable neglect are equitable taking into account, among other things, whether the reason for the delay was within the reasonable control of the movant, Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993), and are addressed to the court's discretion. Lee v. Village of River Forest, 936 F.2d 976, 979 (7th Cir. 1991); Reinsurance Co. of America, Inc. v. Administratia Asigurarilor de Stat, 902 F.2d 1275, 1277 (7th Cir. 1990).

¹The court notes that the motion has not been accompanied by a brief in support thereof as required by the local rules of this court. N.D. Ind. L.B.R. B-9023-1. See also, In re King, 2006 WL 1994679 *1-2 (Bankr. N.D. Ind. 2006).

In essence, the motion represents that the failure to file the required signature pages was due to a problem with counsel's software which, for reasons that are not explained, failed to properly attach the required signature pages to the document submitted to the court for filing. Apparently, until receiving notice of the dismissal of this case, counsel did not realize that the signature pages had not in fact been filed. Counsel states that he viewed each document prior to submitting it to ensure that the documents were indeed attached prior to submitting them, but when submitted for filing the signature pages were no longer attached. However, had counsel taken a moment to check the docket and actually look at what he had filed, he would have easily discovered that the required signature pages were not there and had not been submitted for filing, thereby easily allowing him to remedy the error. Counsel's failure to ensure that the documents he believes he sent to the court for filing had actually been filed does not constitute excusable neglect. See, In re Shideler, 2006 WL 2539710 (Bankr. N.D. Ind. 2006). Cf., In re Sizemore, 341 B.R. 658 (Bankr. N.D. Ind. 2006)(counsel's computer problems do not constitute excusable neglect).

The court also notes that the dismissal of this case was without any type of prejudice. See, 11 U.S.C. § 349(a). See also, Johnson v. Indiana Family & Social Service Administration, 2006 WL 978982 (D. N.D. Ind. 2006); Rodriguez v. Washington, 1995 WL 593081 (D. N.D. Ill. 1995). Thus, the debtors are free to refile at any time without any restrictions, save those which are automatically associated with filing multiple cases within a 12-month period. See, 11 U.S.C. § 362(c)(3),(4).

Debtors' motion for relief from the judgment or order in this case is DENIED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court