

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
SARA ANNE HORD) CASE NO. 07-11172
)
)
Debtor)

**DECISION AND
NOTICE OF HEARING
CONCERNING DISMISSAL AND SANCTIONS**

At Fort Wayne, Indiana, on May 24, 2007.

The petition in this case was filed on May 2, 2007. Accompanying the petition was a certificate indicating that the debtor had completed credit counseling on December 15, 2005 – that is not a typo the year on the certificate is 2005 – and Exhibit D, signed under penalty of perjury, which states that the debtor had received credit counseling within the 180 day period prior to filing. Since the credit counseling certificate filed with the petition clearly indicated counseling was completed well beyond 180 days before the case was filed, the court issued an order giving the debtor fourteen days to demonstrate her eligibility for relief under Title 11; should she fail to do so the case would be dismissed. See, 11 U.S.C. § 109(h). In issuing the order to show cause, the court was acting on the assumption that the debtor had undoubtedly received credit counseling a second time and had simply attached the wrong certificate to the petition. The debtor responded to this order by filing another credit counseling certificate. This one states that she completed credit counseling on May 9, 2007, after the petition was filed.

The response to the court's order to show cause fails to demonstrate that the debtor satisfies the requirements of § 109(h) and is eligible for relief under title 11. All the debtor has done is show

that she obtained credit counseling long before the case was filed and then again after having done so. That is not enough. The required counseling must be received during the 180 days prior to the petition. 11 U.S.C. § 109(h)(1). Anything outside of that time frame does not count. Based upon what has been filed, the debtor has not fulfilled any of the requirements of 11 U.S.C. § 109(h), is not eligible for relief under the United States Bankruptcy Code, and this case should be dismissed.

When confronted with a failure to satisfy with § 109(h) the court, ordinarily, simply dismisses the case. Given what has been happened in this case, however, the court has more serious concerns and believes a further inquiry is required.

This is not a situation in which one can have a good faith debate over how to court to 180. Compare, In re Spears, 355 B.R. 116 (Bankr. E.D. Wis. 2006) (counseling completed the same day is allowed) with, In re Cole, 347 B.R. 70 (Bankr. E.D. Tenn. 2006) (counseling must be completed at least one day prior to filing). The certificate of credit counseling which accompanied the petition indicated that counseling had been completed well over one year prior to filing. How, after reviewing that certificate, counsel could conclude that the debtor satisfied the requirements of § 109(h)(1) is a mystery. Yet, not only did counsel file this case with a credit counseling certificate that had “expired” months before, counsel also apparently allowed the debtor to perjure herself by signing and filing Exhibit D – a single document which is separately signed under penalties of perjury – in which she stated that she had completed credit counseling within the 180 days prior to filing and had received a certificate to that effect, a copy of which was attached. Those statements apparently were not true. When given the opportunity to correct any error that may have occurred through the submission of an outdated certificate, and to demonstrate her eligibility for relief under title 11 by producing a current one, the debtor could not do so.

Given the apparently false representations concerning debtor's eligibility for relief, the court will hold a hearing on **June 13, 2007 at 10:50 a.m.**, in Room 2127, Federal Building, 1300 S. Harrison St., Fort Wayne, Indiana, to consider whether the dismissal of this case should be associated with some type of prejudice and/or whether any sanctions should be imposed upon debtor's counsel. See, 11 U.S.C. §§ 349(a), 526, 727(a)(4); Fed. R. Bankr. P. Rule 9011(b), (c). No later than seven (7) days prior to this hearing, debtor and debtor's counsel shall show cause, in writing, any reason they may have why the dismissal should not be with some type of prejudice and why sanctions should not be imposed.

You should be present in person or by counsel if you wish to be heard with regard thereto.

SO ORDERED.

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