

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
TONY EDWARD WOODWORTH) CASE NO. 07-10065
PATRICIA ANN WOODWORTH)
)
Debtors)

DECISION ON MOTION TO REOPEN WITHOUT COST

At Fort Wayne, Indiana, on May 30, 2007.

Among the changes wrought by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was a new condition upon the debtor's opportunity for a discharge. The debtor is required to complete a course concerning personal financial management after filing the petition and to file proof that it has done so. See, 11 U.S.C. §§ 727(a)(11), 1328(g)(1); Interim Bankruptcy Rule 1007(c). In this district that proof is to be filed within sixty days following the meeting of creditors.¹ See, Order Adopting Amended Interim Bankruptcy Rule 1007, Sept. 29, 2006. The failure to take the course or to file the certificate demonstrating that the debtor has done so does not result in the denial of the discharge or in the dismissal of the case. Instead, once the administration of the case has been completed, the case is simply closed without issuing a discharge. Because the discharge is viewed as being of supreme importance to a bankruptcy debtor, the notice the court issues at the beginning of the case, advising debtors and creditors that it has been

¹As originally drafted, amended interim bankruptcy rule 1007(c) requires the certificate of financial management education to be filed within forty-five days of the meeting of creditors. In its order adopting the amended interim rule, this court changed that deadline from forty-five to sixty days. It did so to make the deadline consistent with the deadlines for filing complaints objecting to the debtor's discharge and to determine dischargeability of debt, thereby avoiding problems that might arise out of a multiplicity of different deadlines, and to give debtors a little more time to comply. Since the deadline could be extended without, in any way, complicating or delaying the administration of the case the judges of this court felt it was appropriate to do so.

commenced, of the date, time and place for the meeting of creditors and of various deadlines, specifically reminds the debtor of the necessity of completing financial management education, the deadline for filing the certificate demonstrating that fact, and the consequences of failing to do so.

It states:

The debtor must file a certification of completion of an instructional course concerning personal financial management (Official Form 23) within sixty days of the meeting of creditors. The failure to do so may result in the case being closed without issuing a discharge. (emphasis original).

Tony and Patricia Woodworth filed this chapter 7 case on January 12, 2007. The notice the court issued concerning their case advised all concerned that the meeting of creditors would be held on February 13, the deadline for filing complaints to determine dischargeability or objecting to the debtors' discharge was April 16, the certificate demonstrating completion of personal financial management education was to be filed within sixty days of the date of the meeting of creditors, and that the failure to file the certificate might result in the case being closed without issuing a discharge. The meeting of creditors was held as scheduled, the trustee filed a no asset report on February 15, 2007, and the deadline for filing the required certificate passed, without any activity. As a result, on April 23, 2007, the court did what it said it would and closed the case without issuing a discharge.

A month after the case was closed, on May 25, 2007, debtors' counsel filed a "motion to reopen without cost." Counsel would like the court to reopen this case so that the debtors can file their financial management certificate and receive a discharge. Such a request is not unusual. Counsel goes further than that, however, by asking the court not only to reopen the case but to do so without requiring the debtors to pay the fee prescribed by the judicial conference (\$260.00).² See,

²Only one motion has been filed but, in light of what is being sought, one may wonder whether the debtors are asking the court to reopen the case only if they do not have to pay the fee

Bankruptcy Court Miscellaneous Fee Schedule, ¶ 11. In making this request counsel does not identify any source for the court's authority to dispense with collecting the required fee, the standards under which it might be able to do so or, aside from those which motivate counsel to seek the reopening, any facts and circumstances that are supposed to persuade the court to waive the fee. Those facts are that the debtors completed the financial management course on March 4, 2007, prior to the case being closed. Upon doing so, they were informed by the course provider that the certificates demonstrating completion of the course would be faxed to their attorney. Counsel never received those certificates, with the result that they were not filed with the court.

Debtors' motion does not justify waiving the fee otherwise associated with a motion to reopen. See, In re Knight, 349 B.R. 681 (Bankr. D. Idaho 2006); In re Miskimon, 2006 WL 3194075 (Bankr. D. Md. 2006). Admittedly, the motion offers an explanation – perhaps even an understandable one – for why the required certificates were not filed. Yet, debtors' counsel certainly knew they had not been filed before the case was ever closed. Both the debtors and their counsel had been reminded in the initial notice of this case not only of the need to file those certificates and of the deadline for doing so, but also of the consequences of failing to file them. As the deadline approached, debtors' counsel must have known that he had not seen those documents and that he had not filed them with the court. Unless waiving the fee otherwise required for motions to reopen cases is to be routine or automatic, it is not enough to demonstrate only that the required certificates were

otherwise required or if they are really making two separate requests: first to reopen the case and second, if possible, to waive the fee associated with such a motion. Such ambiguity – and the need for clarity – explains the rationale behind local bankruptcy rule B-9013-1(a) which requires that every motion or request for an order from the court “shall be filed separately. . . .” N.D. Ind. L.B.R. B-9013-1(a). See also, Matter of Minton, 2006 WL 533352 (Bankr. N.D. Ind. 2006). Given the requirements of the local rule, the court construes the motion as asking to reopen the case only if the debtors do not have to pay the fee otherwise required.

not filed. Instead, at a bare minimum, the movant must also come forward with a satisfactory explanation for why the problem was not brought to the court's attention before it was too late and why a motion for an extension of the filing deadline was never made. Knight, 349 B.R. at 687. Debtors' motion does not even attempt to do so. Indeed, in view of the requirements of BAPCPA, which by now should be well known, the reminder contained in the court's notice of the commencement of this case, and the fact that debtors were represented by experienced counsel, the court doubts that they could even make the required showing.

Debtors' motion will be denied. An order doing so will be entered.

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