

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

WE-5

IN RE:)
)
JAMES NIKIFOR ELIEFF,) CASE NO. 07-22537 JPK
) Chapter 13
Debtor.)

ORDER CONCERNING DISMISSAL/ ORDER SCHEDULING HEARING

On October 4, 2007, American General Finance, Inc., by counsel, filed a Motion to Dismiss With Prejudice, which seeks dismissal of the debtor's chapter 13 case and in addition that the dismissal be "with 1 year prejudice." The Court construes the relief requested by this document to include that the debtor be enjoined from filing a case under Title 11 of the United States Code for a period of one year from the date of dismissal of the case. On October 17, 2007, American General Finance, Inc. filed a Supplemental Motion to Dismiss, asserting as additional ground for dismissal that the debtor had failed to comply with 11 U.S.C. § 109(h)(1). On October 26, 2007, the debtor -- by counsel -- filed a "Motion to Individual Debtor's Statement of Compliance With Credit Counseling Requirement" and a "Request for Determination of Credit Counseling Compliance by the Court." A hearing on the motion to dismiss was held on October 29, 2007. The debtor appeared personally and by counsel Robert Holland III; American General Finance, Inc. appeared by counsel Kevin Werner; the Chapter 13 Trustee appeared by Attorney Julia M. Hoham.

11 U.S.C. § 109(h)(1) states that "an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of the filing of the petition . . . received from an approved non-profit budget and credit counseling agency . . . an individual or group briefing . . . that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis." As the statute states, the required counseling must be obtained prior to the filing of the petition; however, pursuant to 11

U.S.C. § 109(h)(3)(A), the Court may grant the debtor 30 days following the filing of the petition to obtain the required counseling if the debtor files a certification which complies with the provisions of that statute.

The record evidences that the debtor did not obtain the required counseling prior to the filing of the petition, and the Motion and the Request filed by the debtor on October 26, 2007 do not establish the requirements of § 109(h)(3)(A). The debtor is therefore ineligible to be a debtor, thereby giving rise to grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c). The Court thus finds that the debtor's petition should be dismissed.

The motion filed by American General Finance, Inc. on October 4, 2007 requests relief in addition to dismissal of the case. In order to determine whether or not that relief should be granted, it will be necessary for the Court to conduct an extended evidentiary hearing. At the October 29, 2007 hearing, the Court advised the parties that the case would be dismissed but that the Court would retain jurisdiction to determine whether or not the creditor's requested injunction against future filings should be entered. The Court has reconsidered this position, given the problematic nature of retaining jurisdiction with respect to a matter in a case which has been dismissed. The Court will thus withhold its order of dismissal pending the evidentiary hearing subsequently set by this order.

IT IS ORDERED that a final evidentiary hearing will be held on **December 5, 2007 at 2:00 P.M.** with respect to the request by American General Finance, Inc. that the debtor be enjoined from filing a case under Title 11 for a period of one year.

Dated at Hammond, Indiana on November 14, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution

Debtor, Attorney for Debtor, U.S. Trustee, Trustee
All Creditors, All Intervenors