

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ROBERT MARTINEZ and) CASE NO. 08-21480 JPK
LINDA J. MARTINEZ,) Chapter 13
)
Debtors.)

ORDER DENYING MOTION TO RECONSIDER DENIAL OF MOTION
FOR RELIEF AND TO RESET PRE-HEARING CONFERENCE ("MOTION")

The Motion, filed on December 2, 2008, requests that the court vacate its docket order of November 28, 2008 by which the creditor's motion filed on October 29, 2008 was denied. As stated on the record in open court, the motion was denied because no one appeared on behalf of the moving creditor at the hearing held on November 24, 2008 with respect to the creditor's motion for stay relief/abandonment. This Motion is apparently based on Fed.R.Bankr.P. 9024/ Fed.R.Civ.P. 60(b), although one would not know that from the terms of the Motion itself, in that it fails to designate any basis upon which its requested relief is founded. The Motion thus violates Fed.R.Bankr.P. 9013 by failing to state with particularity the grounds upon which it is based. The Motion further violates N.D.Ind.L.B.R. B-9023-1(a), in that no supporting brief was submitted with it. The court also notes that the mere failure of an attorney to attend a hearing does not give rise to excusable neglect under Fed.R.Civ.P. 60(b)(1): the establishment for this ground for relief requires an explanation of a reason(s) for the attorney's failure to appear.

The motion for stay relief/abandonment was dismissed without prejudice, although perhaps that is not entirely clear to the movant. Thus, all that would be saved by granting this Motion is the small amount of work necessary to file a duplicate motion for stay relief/ abandonment and a filing fee.

The court finds that the Motion should be denied.

IT IS ORDERED that the Motion is denied; the creditor is free to file another motion of

the nature of that which was denied.

Dated at Hammond, Indiana on December 11, 2008.

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

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee
Attorney for Creditor