

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)	CASE NO.	09-40738
)	CHAPTER	7
GERALD WILLIAM REIFEL)	REG/jd	
AMY ELIZABETH REIFEL)		
)		
Debtors)		

DECISION AND ORDER
DENYING MOTION TO REOPEN

At Fort Wayne, Indiana, on December 22, 2009.

This matter is before the court on the debtors' motion to reopen this Chapter 7 case. Whether or not the court does so is a matter committed to its discretion. Matter of Bianucci, 4 F.3d 526, 528 (7th Cir. 1993); Matter of Shondel, 950 F.2d 1301, 1304 (7th Cir. 1991).

The debtors want the court to reopen the case in order to hold a hearing on their reaffirmation agreement with Wells Fargo Financial. The court notes, however, that it denied a motion to hold such a hearing, on November 19, 2009, because the motion did not comply with the local rules of this court, see, N.D. Ind. L.B.R. B-4008-1, as it was not signed by debtors' counsel. See also, Fed. R. Bankr. P. Rule 9011(a). This case was not closed until December 16, 2009, nearly one month later. The debtors had plenty of time between the date of the court's order and the date the case was closed to file a motion for a hearing which satisfied the requirements of the court's local rules and the Federal Rules of Bankruptcy Procedure but, for reasons which are not explained, they did not do so. Now that the case has been closed it would appear to be too late. See, In re Kinion, 207 F.3d 751, 756-57 (5th Cir. 2000).

More importantly, even if the court did reopen the case and hold a hearing on the reaffirmation agreement between the debtors and Wells Fargo Financial, it would not approve that

agreement. It has not been signed by debtors' counsel. Instead, by the signature line where counsel is suppose to sign the notation "signature withheld" has been made. Since debtors' counsel apparently did not participate in the reaffirmation agreement process (or cannot say the agreement does not constitute an undue hardship on his clients or that they have the ability to make the required payments) the court cannot approve it. See, In re Collmar, 417 B.R. 920 (Bankr. N.D. Ind. 2009) (a reaffirmation agreement that lacks the participation of debtors' counsel cannot be approved). Under these circumstances, reopening this case would not serve any purpose and, thus, the court need not go through the motions of doing so. See, Kinion, 207 F.3d at 756-57.

The motion to reopen is DENIED.

SO ORDERED.

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