

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
BENJAMIN GRABER LEHMAN,) CASE NO. 10-30315 HCD
) CHAPTER 7
)
DEBTOR.)

ORDER

At South Bend, Indiana, on April 7, 2010.

The continued hearing on the court's March 2, 2010 Order to Show Cause was held April 5, 2010. Appearing at the hearing were the debtor Benjamin Graber Lehman ("debtor"), his attorney Joseph C. Lehman, Esq. ("attorney"), Chapter 7 Trustee Jacqueline Homann, Esq., and Assistant United States Trustee Alex L. Edgar, Esq. This was the third scheduled hearing which required attorney Lehman to show cause why the debtor's chapter 7 voluntary petition should not be dismissed. The attorney did not appear at the first show-cause hearing on March 16, 2010, and did not notify the court that he would not or could not be present. The attorney's client did appear. The attorney then requested another continuance when the rescheduled hearing conflicted with his family vacation. At the April 5, 2010 hearing, the court asked the attorney to explain his nonappearance at the first show-cause hearing and to explain his failure to submit a filing fee with the debtor's bankruptcy petition.

The court may dismiss a chapter 7 case only after notice and a hearing and only for cause, including the nonpayment of any required fees and charges. 11 U.S.C. § 707(a)(2). "Every petition shall be accompanied by the filing fee," pursuant to Federal Rule of Bankruptcy Procedure 1006(a), unless the court gives the debtor permission to waive the filing fee or to pay it in installments. In this case, the debtor did not apply to pay the fee in installments. Thus the filing fee was due when the debtor's bankruptcy petition was filed.

The debtor's earlier bankruptcy case, Case No. 09-35846, was dismissed on January 25, 2010, for failure to pay the filing fee. *See* R. 14, Order. In its Order Dismissing Case, issued December 28, 2009, the court stated: "The unpaid filing fee of \$299 remains due and owing notwithstanding the dismissal of the case." *Id.* In other words, the debtor was forbidden to refile unless he first tendered payment in full of all past filing fees. Despite that Order, one week later, on February 3, 2010, attorney Lehman electronically filed a second chapter 7 petition for the debtor and submitted a payment of \$299. He did not tender the filing fee for both the dismissed case and the newly filed case. This court then required the debtor's attorney to appear and to show cause why the newly filed case should not be dismissed. In addition, because the attorney did not attend the March 16, 2010 show-cause hearing, the court required him to demonstrate good cause for his nonappearance.

The attorney offered two justifications for his nonattendance. He first stated that he was required to be present at a state court hearing that day and that he had faxed that information to the chapter 7 Trustee. The court made clear that such notification was insufficient notice to the court; by not filing a notice or contacting this court concerning his state court commitment, the attorney simply ignored the Order of this court. The attorney also admitted that he perhaps did not read the court's Order in its entirety and did not realize that he was required to attend the hearing. The court found that admission to be no excuse whatsoever for any attorney who has graduated from law school and passed a bar exam. It noted, as well, that the attorney had offered no justification for not paying the filing fee in the first case he had filed for Benjamin Graber Lehman.

The court finds that the attorney's excuses for nonpayment of the filing fee and for nonattendance at the court hearing are unacceptable; the attorney has not demonstrated good cause for his failures, which border on malfeasance and/or incompetence. It also finds that the attorney still has not paid the filing fee due and owing in the dismissed case. It certainly is within the court's discretion to dismiss an action for failure to pay the required filing fee. *See In re Davis*, 278 B.R. 429, 431 (Bankr. W.D. Mich 2002); *In re*

Griffith, 209 B.R. 823, 826 (Bankr. N.D.N.Y. 1996). However, such a dismissal would be unfairly punitive to the chapter 7 debtor, who was not culpable in this case. Given the facts and circumstances of the case, the court finds that dismissal is inappropriate.

The court therefore directs the attorney Joseph C. Lehman to pay the remaining filing fee of \$299 no later than Friday, April 9, 2010, at or before 4:00 p.m., the close of the courthouse's business day. The court advises the attorney that any further ignoring of the court's Orders or nonpayment of filing fees will not be tolerated. Finally, the court orders the attorney to register for and to attend a refresher Court Management and Electronic Case Filing (CM/ECF) course in the next available class, being held June 11, 2010, at 9 a.m., in South Bend, Indiana. Information concerning that class can be found at www.innb.uscourts.gov, the court website, at the ECF link. No excuses for nonattendance will be accepted. The attorney is required to provide proof of his successful completion of the course by letter to the undersigned within five (5) days of his completion of the course.

SO ORDERED.

/s/ HARRY C. DEES, JR.
Harry C. Dees, Jr., Judge
United States Bankruptcy Court