

# NOT FOR PUBLICATION OR CITATION

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

IN THE MATTER OF: )  
 )  
WARREN TAM ) CASE NO. 10-40825  
 )  
 )  
Debtor )

## **DECISION AND ORDER** **DENYING MOTION TO VACATE DISMISSAL**

At Fort Wayne, Indiana on September 21, 2010.

On September 9, 2010, the court issued a decision and order dismissing this case because the debtor had failed to demonstrate eligibility for relief under title 11. The debtor has now filed a motion, pursuant to Rule 59, to vacate that order.

Rule 59 of the Federal Rules of Civil Procedure is made applicable to bankruptcy proceedings by Bankruptcy Rule 9023. Such motions are addressed to the court's discretion, In re Prince, 85 F.3d 314, 324 (7th Cir.1996) and may be considered without a hearing or requiring a response. See, Dunn v. Truck World, Inc., 929 F.2d 311, 313 (7th Cir. 1991). See also, N.D. Ind. L.B.R. B-9023-1(b). To succeed under Rule 59 a movant is generally expected to demonstrate a manifest error of law or fact or newly discovered evidence that could not have been discovered previously. See, Deutsch v. Burlington Northern R. Co., 983 F.2d 741, 744 (7th Cir. 1992) (citing Figgie Int'l Inc. v. Miller, 966 F.2d 1178, 1180 (7th Cir. 1992)); Publishers Resource Inc. v. Walker-Davis Publications, Inc., 762 F.2d 557, 561 (7th Cir.1985). Such a motion may also be appropriate if the court has clearly misunderstood the party, rendered a decision outside of the issues raised, or if there was a significant change in the law since the issues were submitted. Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir.1990). It is not, however, an opportunity to rehash earlier arguments, or to present arguments or evidence "that could and should have been

presented” before, in the hope that the court will change its mind. Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir.1996) (citing LB Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir.1995)). Court orders are not “mere first drafts, subject to revision and reconsideration at a litigant’s pleasure.” Quaker Alloy Casting Co. v. Gulfc0 Indus., Inc., 123 F.R.D. 282, 288 (N.D. Ill. 1988).

The debtor has not demonstrated any mistake of law or fact in the court’s decision, advanced any argument that could not have been asserted before, presented any newly discovered evidence or identified a change in the law. Instead, all he has done is offer evidence and arguments that could and should have been presented before: when the case was first filed, via exhibit D to the petition, or in the response to the court’s order to show cause. Indeed, the motion admits as much. See, Tam’s Rule 59 Motion, filed Sept 13, 2010, ¶ 6 (“Tam because of lack of experience did not states [sic] all the exigent circumstances to this court thinking that those two of tax sale and foreclosure are big enough events to qualify . . .”).

The debtor has had two opportunities to provide the court with the necessary information concerning his eligibility for relief under title 11 and waiving the credit counseling requirement of § 109(h). There is no basis for a third. This is especially so since the dismissal of this case was without prejudice. See, 11 U.S.C. § 349(a). See also, Johnson v. Indiana Family & Social Service Administration, 2006 WL 978982 (D. N.D. Ind. 2006); Rodriguez v. Washington, 1995 WL 593081 (D. N.D. Ill. 1995). Debtor’s motion to vacate the order of dismissal is DENIED.

SO ORDERED.

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