

NOT FOR PUBLICATION OR CITATION

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

IN THE MATTER OF:)
)
JOHN JOSEPH HARRIS) CASE NO. 09-40945
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO RECONSIDER

At Fort Wayne, Indiana, on September 24, 2010.

At a hearing on the chapter 13 trustee's motion to dismiss, the court was advised that, rather than dismissal, the debtor wanted the opportunity to convert to chapter 7. As a result, the court gave the debtor seven days to voluntarily convert to chapter 7 or the case would be dismissed without further notice. Order dated Aug. 17, 2010. Shortly thereafter, the debtor and the trustee began negotiations designed to permit the debtor to remain in chapter 13, and the debtor requested a further fourteen days to finalize any agreement and file a proposed plan modification. When the debtor failed to do anything within the extended deadline it had requested, the court did what it originally said it would and dismissed the case. The debtor has now filed a motion to reconsider the order of dismissal. It is that motion which is presently before the court. The motion is addressed to the court's discretion, In re Prince, 85 F.3d 314, 324 (7th Cir.1996), and may be considered without a hearing and without 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).

The debtor's motion is based upon Rule 60(b)(1) of the Federal Rules of Civil Procedure. Counsel for the debtor argues that the order dismissing the case should be vacated and the case should be reinstated because the failure to file the proposed modification was the product of

excusable neglect.

Determinations of excusable neglect are, at their core, equitable ones, taking into account all the relevant circumstances surrounding a party's omission including, among other things, the length of the delay and the reasons for it, whether that delay was within the reasonable control of the movant and its impact upon the proceedings. Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993). As such, it is an issue addressed to the court's discretion. Lee v. Village of River Forest, 936 F.2d 976, 979 (7th Cir. 1991); Reinsurance Co. of America, Inc. v. Administratia Asigurarilor de Stat, 902 F.2d 1275, 1277 (7th Cir. 1990).

Counsel concedes that the failure to file a proposed modification within the time required was the product of neglect: prior to leaving his office for a scheduled vacation, he overlooked the filing deadline. The only question is whether that neglect is excusable. See, Pioneer Inv. Services Co., 507 U.S. 380, 113 S.Ct. 1489 (excusable neglect is a two-part test). The more a problem is attributable to counsel's actions or counsel's responsibilities, the less likely it is that an order will be vacated. See, Pioneer Investment Services Co., 507 U.S. at 398, 113 S.Ct. at 1499-1500 (ambiguity in notification of claims bar date constitutes excusable neglect while internal office problems do not).

The situation presented here does not rise to the level of neglect which is excusable. This is particularly so when one remembers that counsel is the one who requested and selected the extended deadline. "The neglect at issue in this case is nothing more than inexcusable run-of-the-mill inattentiveness by counsel." Thompson v. E.I. DuPont de Nemours & Co., Inc., 76 F.3d 530, 535 (4th Cir. 1996). Counsel was well aware of the deadline prior to leaving for vacation;

the failure to satisfy it is not excusable neglect. 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 reconsider the order dismissing this case is DENIED.

SO ORDERED.