

Not Intended for Publication or Citation

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

IN THE MATTER OF:)
)
EDWARD DOWNS) CASE NO. 11-40351
)
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on May 13, 2011.

This case was dismissed on May 6, 2011, due to the debtor's failure to submit the required filing fee, request a waiver of that requirement, or request to pay the fee in installments when the case was filed. As a result, it did not satisfy the minimum requirements needed to commence a case. See, Fed. R. Bankr. P. Rule 1006; N.D. Ind. L.B.R. B-1002-1(a)(2); 11 U.S.C. § 707(a)(2). See also, 28 U.S.C. § 1930(a). Debtor's counsel has filed a motion asking the court to vacate the order of dismissal and to reinstate this case.¹ Counsel claims he was not familiar with the local rules of this court and was waiting until he was assured the debtor's check would clear before he paid the filing fee. Yet, the fee (or an associated motion) was due upon filing, not some later date and not because of any local rule or requirement. Counsel's excuses are not sufficient. See, Weinstock v. Cleary, Gottlieb, Steen & Hamilton, 16 F.3d 501, 503 (2nd Cir. 1994); Bohlin Co. v. Banning, 6 F.3d 350, 356-57 (5th Cir. 1993); Wakefield v. Northern Telecom, Inc., 813 F.2d 535, 542 (2nd Cir. 1987); In re King, 2006 WL 1994679 (Bankr. N.D. Ind. 2006) (ignorance of the rules of procedure does not constitute excusable neglect). Furthermore, the problem that led to the dismissal of this

¹The court notes that the motion has not been accompanied by a brief in support thereof as required by the local rules of this court. N.D. Ind. L.B.R. B-9023-1. See also, In re King, 2006 WL 1994679 *1-2 (Bankr. N.D. Ind. 2006).

case – the failure to pay the required filing fee or file the required motions – has yet to be corrected, so that even now, the court still does not have the required payment. See, Tolliver v. Northrup Corp., 786 F.2d 316, 319 (7th Cir. 1986)(“It would take an extraordinary set of facts – one we cannot now imagine – to make a case of ‘abuse of discretion’ in failing to restore to the docket a case in which the defaulting party is still in default at the time the [] judge rules on the motion to vacate.”). Finally, even if the court were inclined to grant the debtor’s motion, he has still failed to satisfy the minimum filing requirements to commence a case, because the petition was not accompanied by a list of all creditors.² See, Fed. R. Bankr. P. Rule 1007(a); N.D. Ind. L.B.R. B-1002-1(a)(4).

For all of these reasons, debtor’s motion for relief from the order dismissing the case is DENIED.

SO ORDERED.

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

²There are other problems with the petition counsel filed on behalf of his client. To begin with, it was filed on an outdated version of Official Form 1. See, Fed. R. Bankr. P. Rule 9009 (“the Official Forms prescribed by the Judicial Conference of the United States must be observed and used”). Although it says it is, the petition was not accompanied by a copy of Exhibit D and/or a certificate of credit counseling, leaving doubts as to the debtor’s eligibility for relief. See, 11 U.S.C. § 109(h).