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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
NATHANIEL JOHN MILLS) CASE NO. 10-15288
RACQUEL RENEE MILLS)
)
Debtors)

DECISION AND ORDER DENYING CONFIRMATION

At Fort Wayne, Indiana, on August 12, 2011.

The court's order of March 17, 2011 directed the debtors and Huntington National Bank to file either a joint proposed pretrial order or a motion to compromise which the court would approve following notice to creditors. Order dated Mar. 17, 2011. When they failed to comply with that order, the court gave them another chance. The order of April 11, 2011, gave them an additional seven days to comply with the order of March 17, stating that the failure to do so would result in denial of confirmation of the debtors' proposed chapter 13 plan. Following that order, the debtors filed a joint motion to compromise; but they never filed and served the notice of the motion as required by both the order of March 17 and the court's local rules. See, N.D. Ind. L.B.R. B-2002-2(a)(13). Because no notice of the motion was ever filed, the court issued an order on July 11, 2011 requiring the debtors and the Bank to show cause, in writing, why the motion to compromise should not be dismissed due to the lack of prosecution. Order to Show Cause dated July 11, 2011. The bank's counsel filed a timely response to the order to show cause explaining that they inadvertently failed to file a proposed order with the motion and, since that has now been done, asked that the motion not be dismissed.

The failure to file a proposed order is not the source of the problem or the reason for the order

to show cause: had it been, the court would have asked the parties to provide an order. The problem goes deeper than that.

The order of March 17 specifically stated that the court would consider a motion to compromise “following notice to creditors.” Furthermore, the court’s local rules provide that the court will consider approving certain motions, including motions to compromise, without a hearing absent a timely objection following notice of the opportunity to object. N.D. Ind. L.B.R. B-2002-2. Had counsel taken a moment to read the court’s orders and to review the docket to determine what had not been done, rather than making some sort of assumption,¹ he would easily have discovered where the problem lay.

Despite having been given multiple opportunities and reminders, see, Orders dated Apr. 11, 2011 and July 11, 2011, the parties have still failed to comply with court’s order of March 17, 2011 and have not given creditors notice of their compromise. Neither have they shown good cause for the failure to prosecute the motion to compromise. See, N.D. Ind. B-7041-1. That motion and confirmation of the debtors’ proposed chapter 13 plan are therefore DENIED. Any further plan shall be filed within fourteen (14) days.

SO ORDERED.

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

¹If, having done those things, counsel still did not understand what was required or what needed to be done, he was free to request a hearing in order to obtain further guidance.