UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
DAVID LEE HARROLD,	)	CASE NO. 11-32696 HCD
	)	CHAPTER 13
	)	
DEBTOR.	)	

Appearances:

Debra Voltz-Miller, Esq., counsel for debtor, 1951 East Fox Street, South Bend, Indiana 46613; and

R. William Jonas, Jr., Esq., counsel for creditor, Hammerschmidt, Amaral & Jonas, 137 North Michigan Street, South Bend, Indiana 46601.

D E C I S I O N and O R D E R

At South Bend, Indiana, on February 6, 2012.

Before the court is the Debtor's Motion to Dismiss Chapter 13 Bankruptcy Without Prejudice, filed on January 30, 2012, by the chapter 13 debtor David Lee Harrold. One of the debtor's creditors, the Estate of Roland Walker, deceased, Robert Thornburg, Personal Representative, has objected to the debtor's Motion to Dismiss on the ground that the debtor has filed his chapter 13 petition in bad faith. No hearing on the issue is required. *See* Fed. R. Bankr. P. 1017(a).

Section 1307(b) governs a debtor's right to dismiss his or her case under chapter 13 of the Bankruptcy Code. That provision states:

> § 1307(b). On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court *shall* dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

11 U.S.C. § 1307(b) (emphasis added).

The plain language of that provision makes clear that a debtor in an unconverted chapter 13 case has an absolute right to seek dismissal of his petition and that the court is mandated to dismiss the case. *See In re Williams*, 435 B.R. 552, 560 (Bankr. N.D. Ill. 2010); *see also In re Polly*, 392 B.R. 236, 246 (Bankr.

N.D. Tex. 2008); *In re Winder*, 2011 WL 2620992 at *2 (Bankr. N.D. Ala. July 1, 2011); 8 *Collier on Bankruptcy* ¶ 1307.03 (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. 2011).[1]

Nevertheless, there are cases that have determined that § 1307(b) is subject to a limited exception for bad faith conduct or abuse of the bankruptcy process. They, like this objecting creditor, rely on *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L.Ed.2d 956 (2007). The creditor urges the court to deny the Motion to Dismiss made by this debtor who, it asserts, has filed the chapter 13 case in bad faith. The court notes that the creditor offered no argument to persuade the court; it simply cited *Marrama*. It further notes that the Seventh Circuit Court of Appeals and the district courts with appellate authority over this court have not ruled on the issue.

This court is not persuaded by the creditor's position. *Marrama*, interpreting § 706(a), not § 1307(b), held that the right of conversion (not the right of dismissal) in a chapter 7 (not chapter 13) case is lost if the debtor engaged in bad faith. *See id.* at 371. The Supreme Court relied heavily on § 706(d), which limits the eligibility of a chapter 7 debtor: "Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter." The Court then held that "[t]he text of § 706(d) therefore provides adequate authority for the denial of [a chapter 7 debtor's] motion to convert." *Id.* at 374.

This court finds no limitation comparable to § 706(d) in the chapter 13 provision for dismissal. It concurs with the thorough, thoughtful reasoning of Bankruptcy Judge Eugene R. Wedoff, of the United States Bankruptcy Court of the Northern District of Illinois, author of *In re Williams*, who concluded: "Without a separate statutory provision limiting § 1307(b) in the same way that § 706(d) limits § 706(a), the right that § 1307(b) accords debtors to obtain dismissal of unconverted cases cannot be limited." *In re Williams*, 435 B.R. at 558. Moreover, this court agrees that a concern about abuse of the bankruptcy system

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[1] The debtor effectuates the dismissal pursuant to Federal Rule of Bankruptcy Procedure 1017(f)(2). According to *Collier*, "there is no right to contest the dismissal," and "[t]he court's participation is required only to verify that the case was commenced as a chapter 13 case." 8 *Collier* ¶ 1307.03[1] at 1307-9.

"does not itself permit the courts to alter statutory provisions." *Id.* This court will not amend the mandatory language of § 1307(b) or graft a bad-faith exception onto it. *See id.* at 559 (finding no bad-faith exception in § 1307(c) that would limit dismissal under § 1307(b)).

In summary, the court holds that § 1307(b) guarantees to a debtor in an unconverted chapter 13 case the right of dismissal, and it requires a court to dismiss the debtor's unconverted chapter 13 case. The provision's only limitation of that right of dismissal is that the case must not have been converted to chapter 13 from chapter 7, 11, or 12. There is no evidence of a prior conversion in this case; it was originally filed as a chapter 13 case. Moreover, no other qualification or limitation of the right to dismiss is found in another statutory provision of the Bankruptcy Code; nor does § 1307(b) authorize any judicial discretion. *See In re Williams*, 435 B.R. at 560; *see also In re Brandford*, 386 B.R. 742, 750 (Bankr. N.D. Ind. 2008) (holding that § 1307(b) "is a statement of a debtor's absolute right to dismiss a Chapter 13 case, perhaps only subject to potential conversion . . . .").

For these reasons, the court overrules the Objection of the creditor the Estate of Roland Walker, deceased, Robert Thornburg, Personal Representative, and grants the Motion to Dismiss of the chapter 13 debtor David Lee Harrold.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT