

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
ROBERT B. GONZALEZ) CASE NO. 15-30260 HCD
) CHAPTER 7
)
DEBTOR)

ORDER DISMISSING CASE

At South Bend, Indiana, on March 16, 2015.

Before the court is Robert B. Gonzalez's request for a temporary waiver of the credit counseling requirement. For the reasons discussed below, the court denies Gonzalez's request for a temporary waiver of the credit counseling requirement and dismisses this case without prejudice.

DISCUSSION

Gonzalez commenced this chapter 7 bankruptcy case on February 20, 2015. He did not obtain a briefing from a credit counseling agency before filing his bankruptcy petition. Instead, with his voluntary petition he filed Exhibit D, the "Individual Debtor's Statement of Compliance with Credit Counseling Requirement," on which he marked box three certifying he was unable to obtain pre-petition credit counseling due to exigent circumstances. ECF No. 1, pgs. 4-5. He did not list any circumstances on this form.

To be eligible to commence a case under any chapter of Title 11, § 109(h) of the Code requires that during the 180-day period prior to filing an individual must receive an individual or group briefing that outlines the opportunities for available credit counseling, and he or she must also receive assistance in performing a budget analysis from an approved nonprofit budget and credit counseling agency. 11 U.S.C. § 109(h)(1). To be entitled to that temporary waiver of this requirement, a debtor must meet the requirements of 11 U.S.C. § 109(h)(3). The debtor must submit a certification that describes both the debtor's efforts to obtain prepetition credit counseling and also the exigent circumstances meriting a

temporary exemption of the requirement. Both certifications must be satisfactory to the court. See § 109(h)(3)(A); *In re Karim*, 2009 WL 2044694, *2 (Bankr. E.D. Va. July 7, 2009) (“An ‘exigent’ circumstance is an urgent or emergency situation that makes it necessary to file a bankruptcy case immediately because bankruptcy relief would be unavailing if the filing of the petition had to be delayed to obtain credit counseling first.”)

Upon review of Gonzalez’s certification, the court finds that he did not identify **any** exigent circumstances that would justify waiving the statutory credit counseling mandate. Exigent circumstances exist when an urgent and unusual situation exists involving adverse events that are imminent and that requires a bankruptcy filing immediately. See *In re Fortman*, 456 B.R. 370, 373-74 (Bankr. N.D. Ind. 2011); *Dixon v. LaBarge (In re Dixon)*, 338 B.R. 383, 388 (8th Cir. B.A.P. 2006). Gonzalez did not list any circumstances on Exhibit D. He has not pointed to any situation that might call for the immediate filing of a bankruptcy petition.

The court notes that a credit counseling agency must “provide services without regard to ability to pay the fee.” 11 U.S.C. § 111(c)(2)(B). Section 111 also requires the United States Trustee Program to approve credit counseling agencies. That Program has approved more than 60 credit counseling agencies in this district¹. These agencies provide counseling in person, by telephone, or over the Internet.

Finding that Gonzalez has described no exigent circumstance, the court concludes that he has failed to satisfy the requirements of § 109(h)(3)(A). Therefore the court denies Robert B. Gonzalez’s request for a temporary waiver of the credit counseling requirement of § 109(h)(1). Without a waiver of the prepetition credit counseling requirement, Gonzalez is not eligible for relief under the Bankruptcy Code. See § 109(h)(1). The court must dismiss his bankruptcy case.

¹See *List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111*, http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm (last visited March 16, 2015).

The court notes the entry of an Order on Debtor's Application for Waiver of the Chapter 7 Filing Fee on March 2, 2015. This order requires Gonzalez to make installment payments of \$84.00 by March 23, April 21, May 21, and June 22. As of the date of this order dismissing case, Gonzalez has not made any payments and owes \$335.00. "A filing fee is due upon the commencement of a case, Fed. R. Bankr. P. Rule 1006(a), and the obligation to pay it is not affected by subsequent events in the case." *In re Fortman*, 456 B.R. at 374; see Bankruptcy Fee Compendium III (June 1, 2014), Part B, ¶3.C.(4)(a), p. 26. ("If the court dismisses a case before the due date of the last installment payment, the debtor still must pay in full the fees due upon filing.") Despite the dismissal of his case, Gonzalez still owes the \$335.00 balance of the unpaid filing fees. See 28 U.S.C. § 1930(a), (b).

CONCLUSION

The chapter 7 bankruptcy case of Robert B. Gonzalez is dismissed without prejudice.

SO ORDERED.

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