

NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JEREMY WIMBLEY) CASE NO. 15-10580
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO RECONSIDER

On May 19, 2015

The court's order of April 29, 2015, dismissed this case because the debtor failed to respond to the order of April 3, 2015. That order identified the court's concerns about debtor's eligibility for relief under title 11, gave him an opportunity to properly demonstrate that eligibility and warned him that the failure to do so would result in dismissal, without further notice or hearing. When the debtor did not respond within the time required, the court did what it said it would and dismissed the case.

The debtor has now filed a letter (addressed to the trustee) which the court construes as a motion asking the court to reconsider the dismissal of this case. That letter makes no effort to explain why the debtor did not respond to the order of April 3. Its substance is that debtor was confused about when the required counseling had to be taken, really needs a bankruptcy discharge, and hopes the court will reconsider its actions.

The debtor's failure to offer any explanation for his failure to respond to the order April 3 is fatal to his motion. See, U.S. Bank Nat. Ass'n v. Dunn, 2013 WL 1222054 (N.D. Ill. 2013); In re Glover, 2011 WL 304321 *3 (Bankr. D. Dist. Col. 2011). Yet, even if the court considers his present letter as though it were a timely response to that order the result would be no different.

To be eligible for relief under Title 11, an individual must have received credit counseling

from an approved agency during the 180-day period prior to filing the petition. 11 U.S.C. § 109(h)(1). This means that the required counseling can be completed up to the moment of filing. In re Lane, 2012 WL 1865448 *4 (Bankr. N.D. Okla. 2012); In re Koo, 2012 WL 692578 *1 (Bankr. D. Dist. Col. 2012). Completing it after the case is filed does not count, unless a debtor requested and satisfied one of the exceptions that would allow such a deferral, see, 11 U.S.C. § 109(h)(2)-(4), something debtor did not and has not attempted to do.

The petition initiating this case was filed on March 19, 2015 at 12:24 p.m. EDT (9:24 a.m. PDT). The signed copy of Exhibit D represented, under penalty of perjury, that the debtor had completed credit counseling “within the 180 days before the filing of my bankruptcy case,” but the certificate demonstrating the completion of that counseling was not attached to the petition, as instructed. It was not filed until April 1 and it disclosed that the required counseling was received on March 19, 2015, at 9:30 a.m. PDT (12:30 p.m. EDT). This was six minutes after the petition had been filed, not before, (as pointed out in the order of April 3).¹

In his letter, the debtor says that “he did not understand the correct steps to take in completing the credit counseling course online” and his “understanding of the rule was that as long as [he] completed credit counseling before [he] filed [his] paperwork [he] was in compliance.” That is true. But, the debtor did not complete the required counseling before filing; he completed it after doing so. Whether it is six minutes, six hours, six days or six weeks, after is not before. The debtor was not eligible for relief under Title 11 at the time the case was filed. Furthermore, the dismissal of the case was without prejudice, so there is no bar to filing a second case and getting a

¹It strikes the court as odd that the debtor could be at the courthouse filing his petition and simultaneously taking the credit counseling course online. Someone was apparently doing one of those things for him.

discharge then. See, Rodriguez v. Washington, 1995 WL 593081 (N.D. Ill. 1995)(dismissal without prejudice gives no just cause to complain).

Debtor's motion to reconsider is DENIED.

SO ORDERED.

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