

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JERRY NMN BANDA) CASE NO. 06-10133
AMBER L. BANDA)
)
Debtors)

DECISION

At Fort Wayne, Indiana, on March 9, 2006.

By the court’s order of February 17, 2006, the debtors were directed to file an amended certification of exigent circumstances which fully complied with the requirements of § 109(h) and demonstrated eligibility for relief under Title 11. The failure to do so was to result in dismissal without further notice or hearing. On March 3, 2006, the debtors filed an amended certificate. Unfortunately, this certificate is not sufficient or “satisfactory to the court.” To begin with, it is signed by debtors’ counsel, not by the debtors. Thus, it does not constitute a certification as required by § 109(h). See, In re DiPinto, 336 B.R. 693, 696 (Bankr. E.D. Pa. 2006); In re Rodriguez, 336 B.R. 462, 469 (Bankr. D. Idaho 2005). More fundamentally, it fails to demonstrate that the “the debtor requested credit counseling . . . but was unable to obtain [it]” within five days, 11 U.S.C. § 109(h)(3)(A)(ii). It shows only that they could not obtain it for free – that is different from not being able to obtain it at all, which is what the statute requires.

Consequently, the debtors have not fulfilled the requirements of § 109(h) and are not eligible for relief under the United States Bankruptcy Code. This case should be dismissed. An order doing so will be entered.

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