

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
MARLENE DOUGLAS) CASE NO. 06-10550
TOMMY JOE DOUGLAS, JR.)
)
Debtors)

DECISION AND ORDER
CONCERNING DEBTOR'S COMPLIANCE WITH § 109(h)

At Fort Wayne, Indiana, on April 28, 2006

As a result of the bankruptcy reforms of 2005, to be eligible for relief under Title 11 an individual must have received credit counseling from an approved agency during the 180 days prior to filing the petition. 11 U.S.C. § 109(h)(1). This requirement may be waived, however, if the debtor files “a certification,” which “is satisfactory to the court,” describing “exigent circumstances” necessitating the immediate filing of a bankruptcy petition without waiting for the completion of credit counseling, and which “states that the debtor requested credit counseling . . . but was unable to obtain [it]” within five days. 11 U.S.C. § 109(h)(3)(A)(i-iii). The certification must be filed with the petition, see, Interim Bankruptcy Rule 1007(b)(3), (c), and it must state the facts demonstrating both exigent circumstances and the debtor’s efforts to obtain credit counseling “with particularity.” Fed. R. Bankr. P. Rule 9013. If the certification is satisfactory to the court, the debtor is then required to obtain credit counseling within the 30 days following the petition. 11 U.S.C. § 109(h)(3)(B).

The debtors in this case have asked the court to waive the requirement of pre-petition credit counseling by filing a letter signed by K.C. Wright stating that the debtors were threatened with imminent foreclosure of their home and that one of the debtors suffers from a health condition. Even

if this letter is construed as a certification describing exigent circumstances which would merit a waiver of the requirement, it does not comply with the requirement of § 109(h) and, therefore, is not satisfactory to the court. To begin with, it is not signed 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, although the letter seems to have made some effort to describe exigent circumstances necessitating the immediate filing of a bankruptcy petition, the purported certification fails to indicate that the debtors unsuccessfully sought credit counseling prior to filing this case or any efforts the debtor made to obtain that counseling.

Debtors' certification for a waiver of the requirement of pre-petition credit counseling is not satisfactory to the court; therefore, based upon the present record, the debtors are not eligible for relief under Title 11. Debtors shall file an amended certification which must fully comply with all of the requirements of § 109(h)(3) within fourteen (14) days. The failure to do so will result in the dismissal of this case without further notice or hearing.

SO ORDERED.

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