

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
RICKY LYNN FROST, SR. ) CASE NO. 06-10746  
CONNIE SUE FROST )  
 )  
Debtors )

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

At Fort Wayne, Indiana, on May 24, 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).

Although the debtor has asked the court to waive the requirement of pre-petition credit counseling, the certification for that waiver does not adequately describe exigent circumstances and, therefore, is not satisfactory to the court. “Exigent circumstances” which merit a waiver of the

requirement for pre-petition credit counseling are those where the debtor will face some significant harm or detriment, beyond the financial misfortune which is motivating it to file bankruptcy, if the filing is delayed while the debtor obtains credit counseling. Debtor's certification fails to describe circumstances that rise to this level of immediacy. At best, it indicates only that the debtor faces financial misfortune. While this may help to make the resort to bankruptcy understandable, it is not sufficient to indicate that the filing cannot be delayed while the debtor obtains the required credit counseling.<sup>1</sup>

Debtor's 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 debtor is not eligible for relief under Title 11. Debtor 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

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<sup>1</sup>Because the certification fails to describe exigent circumstances meriting a waiver, the court expresses no opinion as to whether any statement concerning unsuccessful efforts to obtain credit counseling is "satisfactory to the court."