

THIS OPINION IS NOT INTENDED FOR PUBLICATION.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 98-52405
)	
RUBEN Y. BADALYAN,)	CHAPTER 13
)	
Debtor.)	JUDGE MARILYN SHEA-STONUM
)	ORDER DISMISSING CASE WITH
)	SANCTIONS UNDER 11 U.S.C.
)	§ 109(g)

This matter came before the Court on the motion to dismiss case filed by the chapter 13 trustee (the "Trustee") . This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.¹

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On November 12, 1998, Debtor filed a notice of appeal to the Bankruptcy Appellate Panel for the Sixth Circuit Court of Appeals regarding the Court's Order overruling certain procedural objections to claims and denying Debtor's motion for recusal. Debtor's appeal of that Order does not divest the Court of jurisdiction with respect to the administration of this case, including dealing with the Trustee's motion filed on October 8, 1998, and Debtor did not seek any continuance of the November 19, 1998 hearing on the Trustee's motion to dismiss.

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I. FACTS

On August 4, 1998, Debtor filed a petition under chapter 13 of the Bankruptcy Code. Debtor's chapter 13 plan (the "Plan") provides that all secured claims are to be rejected and not paid in any manner. In addition to objecting to this provision of the Plan, the Trustee has noted in the motion to dismiss that the Plan does not list a percentage to be paid to unsecured creditors, and the Trustee cannot evaluate whether the Plan complies with 11 U.S.C. § 1325(a)(3) and (a)(4).

Despite the Trustee's motion to dismiss and an Order to show cause, filed on November 10, 1998, which provided that an amended plan could be filed by November 16, 1998, Debtor has failed to file an amended chapter 13 plan which complies with the provisions of 11 U.S.C. § 1325. In addition, the Debtor did not appear at the November 19, 1998 hearing on the Trustee's motion to dismiss.

II LAW

On request of a party in interest and after notice and a hearing, the Court may dismiss this case for cause. 11 U.S.C. § 1307. "Cause" includes unreasonable delay by Debtor that is prejudicial to creditors. 11 U.S.C. § 1307(1). "Cause" also includes Debtor's failure to file a chapter 13 petition in good faith. "The party who seeks a discharge under Chapter 13 bears the burden of proving good faith." In re Caldwell, 895 F.2d 1123, 1126 (6th Cir. 1990). In assessing good faith, the Court is to consider the totality of the circumstances. In re Barrett, 964 F.2d 588, 591 (6th Cir. 1992).

Although Debtor filed this case on August 4, 1998, Debtor has done nothing to remedy the defects in the Plan identified in paragraphs one and two of the Trustee's motion to dismiss. Debtor's failure to amend the Plan to satisfy the requirements of 11

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U.S.C. § 1325 constitutes unreasonable delay that is prejudicial to his creditors. In addition, Debtor's failure to file a plan which complies with 11 U.S.C. § 1325 indicates that he has not filed this case or the Plan in good faith. Consequently, pursuant to 11 U.S.C. § 1307(c), the Court shall dismiss this case. In addition, in accordance with 11 U.S.C. § 109(g), because Debtor has failed to appear before the Court in proper prosecution of this case, Debtor shall be prohibited from filing another case under title 11 for 180 days from the entry of this Order.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 11/20/98