

IT IS SO ORDERED.

Dated: 9 June, 2016 12:17 PM



Jessica E. Price Smith

JESSICA E. PRICE SMITH
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:
LANEKA STUBBS

Debtor.

In Proceedings Under Chapter 7

CASE NO: 14-17806

JUDGE JESSICA E. PRICE SMITH

ORDER

The matter before this Court is the Court's Order on Debtor to Appear and Show Cause why she should not be held in contempt for failing to comply with this Court's September 24, 2015 order requiring her to appear for a 2004 exam (Doc. No. 42). The Chapter 7 Trustee, Sheldon Stein, filed a Memorandum about the Order to Show Cause (Doc. No. 44). Also pending is a Motion for Default Judgment in Adv. Proc. 15-1190 where the Trustee seeks to revoke the Debtor's discharge for failure to appear at the 2004 exam and produce her 2014 tax return (Doc. No. 7).

The Trustee requested Debtor's 2014 state and federal tax returns because, based on the timing of the filing of Debtor's case, the majority of the non exempt portion of the tax refund, if there was one, would be property of the estate. He requested that Debtor provide him with these returns at the § 341 meeting. The meeting was scheduled for January 20, 2015 and the Trustee adjourned it to February 2, 2015, then to February 17, 2015. The Trustee concluded the § 341

meeting on February 17, 2015, without Debtor providing the 2014 tax returns. Despite this, he filed a Notice of Assets on February 18, 2015 and an initial report that showed the 2014 tax refund was a contingent asset. In accordance with this Court's procedure, once the § 341 is concluded and the Debtor has provided all documents required by the Court, the case is eligible for an automatic discharge. Here, the discharge was entered on April 29, 2015.

On September 24, 2015, the Trustee filed a Motion for 2004 exam, requiring the Debtor to appear on October 20, 2015 and provide him with her 2014 federal and state tax returns. The order was entered by the Clerk's Office pursuant to Administrative Order 11-2. After the Debtor failed to appear and provide her tax returns, the Trustee filed the adversary complaint seeking to revoke her discharge for failure to appear at the examination and failure to provide the tax returns. The Debtor failed to answer the complaint and the Trustee moved for default judgment.

On May 13, 2016, this Court, sua sponte, entered an order on the Debtor to appear and show cause as to why she should not be held in contempt for failure to comply with the order to attend the 2004 exam. In his responsive Memorandum to this Court's Order to Show Cause on the Debtor, the Trustee argues that any sanction against the Debtor at this point would be a nullity because the Debtor has already received her discharge and has no motivation to comply with any further orders of the Court. He also alleges that failure to revoke the Debtor's discharge in this case will result in debtors in general failing to cooperate with trustees because debtors, "knowing the Court is not likely to revoke their discharge under §727, have little incentive to cooperate with Trustee, obey orders of the court, or comply with statutory duties imposed on them." He further states that even if the Debtor complies and produces her tax returns, the Debtor "will not comply with future court orders or cooperate with the Trustee except under the threat of revocation."

When the Debtor initially failed to provide her tax returns, the Trustee failed to seek dismissal of the case, failed to seek a delay in the entry of the Debtor's discharge, and failed to seek to hold the Debtor in contempt for her failure to cooperate with the Trustee as required by 11 U.S.C. § 521. Any of these actions would have prevented the Debtor from receiving her discharge. Instead, the Trustee concluded the § 341 meeting, did not inform the Court of the Debtor's failure to cooperate, and cleared the path for discharge entry.

Revocation of discharge is "considered a harsh measure" and "runs contrary to the general policy of the Bankruptcy Code of affording a Chapter 7 debtor a fresh start." *See Smith v. Jordan (In re Jordan)*, 521 F.3d 430, 433 (4th Cir. 2008)(internal quotations omitted). Had the case been dismissed for failure to prosecute when the Debtor repeatedly failed to provide her tax returns, then the Trustee would not be forced, in his view, to seek the harsh and punitive remedy of revocation of discharge. The Debtor would have been required to address her financial issues outside of bankruptcy or refile when she was in the position to properly prosecute her case to discharge. This is regularly the result in Chapter 13 cases that are dismissed for prosecution matters. The Court sees no policy or bankruptcy code justification for treating Chapter 7 and Chapter 13 debtors differently where both fail to provide documents requested by their respective trustees.

Furthermore, the Trustee has failed to meet his burden in the adversary proceeding to revoke Debtor's discharge pursuant to 11 U.S.C. § 727(a)(6). That provision requires the Trustee to prove that the Debtor "refused" to obey a court order. Failure of the Debtor to obey is insufficient and revocation under this provision is within the Court's discretion. *In re Rivera*, 338 B.R. 318, 329 (Bankr.N.D. Ohio 2006). Refusal to obey a court order requires a showing of

civil contempt. *Hunter v. Magack (In re Magack)*, 247 B.R. 406, 410 (Bankr.N.D. Ohio 1999).

The Trustee has failed to prove that the Debtor's behavior rises to this level, and based on the responsive pleading filed, does not believe that an order of contempt is necessary.

Accordingly, the Trustee's Motion for Default Judgment is denied and the adversary proceeding is dismissed. Further, in light of the continuing practice to request Motions for 2004 examinations in order to obtain prosecutorial items that should have been provided prior to the conclusion of the § 341 exam, the Court is vacating the administrative order granting authority to the Clerk's Office to sign orders granting Motions for 2004 exams with respect to cases assigned to Judge Price Smith. Finally, the order in this case granting the Motion for 2004 Exam (Doc. No. 36) is vacated. This moots the Court's order to show cause for failing to appear at the 2004 exam (Doc. No. 42).

IT IS SO ORDERED.