

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 08-14508
)
MICHELLE S. MILLER,) Chapter 7
)
Debtor.) Chief Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION AND**
) **ORDER**

Debtor Michelle Miller filed a motion to reopen her chapter 7 case. (Docket 120). For the reasons stated below, the motion is denied.¹

JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(O) and is within the court’s constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

DISCUSSION

11 U.S.C. § 350(b)

Under Bankruptcy Code § 350(b), a case may be reopened “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b); *see also* FED. R. BANKR. P. 5010. The decision on whether to reopen a case is submitted to this court’s sound discretion.

¹ The court is deciding the matter on the filing because the debtor did not request a hearing.

Rosinski v. Boyd (In re Rosinski), 759 F.2d 539, 540-41 (6th Cir. 1985); *Smyth v. Edamerica, Inc. (In re Smyth)*, 470 B.R. 459, 461 (B.A.P. 6th Cir. 2012). “In exercising such discretion, the court ‘is to consider the equities of each case with an eye toward the principles which underlie the Bankruptcy Code.’” *In re Caravona*, 347 B.R. 259, 262 (Bankr. N.D. Ohio 2006) (quoting *In re Kapsin*, 265 B.R. 778, 780 (Bankr. N.D. Ohio 2001)). The debtor, as the moving party, bears the burden of proving that cause exists. *Id.* at 263.

The Debtor’s Motion

The debtor’s case was closed without a discharge because she failed to file a certificate of completion of a personal financial management course. *See* 11 U.S.C. § 727(11); FED. R. BANKR. P. 1007(c). She moves to reopen her case so that she may file her certificate and receive a discharge. Courts frequently find that there is cause to reopen a case for this purpose. *See, for example, In re Cooper*, No. 11-35957, 2012 WL 1605950 at * 1 (Bankr. N.D. Ohio May 8, 2012); *In re Knight*, 349 B.R. 681, 685-86 (Bankr. D. Idaho 2006). These four factors may be considered to determine if such cause exists: (1) whether there is a reasonable explanation for the failure to comply with the financial course requirement; (2) whether the request to reopen was timely; (3) whether the failure to comply is attributable to counsel for the debtor; and (4) whether creditors are prejudiced. *In re Johnson*, 500 B.R. 594, 597 (Bankr. D. Minn. 2013).

As to the first factor, the motion states that the debtor took the financial management course on time and was unaware that the certificate had not been filed before the case closed. The court finds this to be a reasonable explanation for the failure to file the certificate, although the debtor did not attach a copy of the certificate to the motion.

As to the second factor, the court finds that the request is not timely. The court closed

the chapter 7 case on December 30, 2009 and the debtor did not file the motion to reopen until June 16, 2015. The five and a half year delay is substantial and the debtor did not provide an adequate explanation for it. The mere assertion that the debtor was initially unaware that the certificate had not been filed cannot explain away the substantial post-closing delay because the court clearly notified the debtor in January of 2010 that the case had been closed without a discharge due to the failure to file a certificate. *See* docket 119.

As to the third factor, the debtor appears to blame her prior counsel for the failure to file the certificate. This may well be an accurate assessment given that the court notified counsel twice of the need to timely file the certificate. *See* docket 114, 117.

The debtor's motion does not address the fourth factor; however, it can safely be presumed that creditors will be prejudiced if the case is reopened and a discharge is entered five years later. It is likely that at least one creditor has taken steps to collect a debt based on the lack of a discharge, although again the debtor does not explain what caused the debtor to file the motion at this time.

Based on consideration of these factors, the court finds that the debtor has not established cause to reopen her case and her motion is denied.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge