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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
09 SEP 15 AM 10:20
CLERK OF COURT

In re:)	Case No. 99-10496
)	
AMINAH J. FOLAMI,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
STEVEN S. DAVIS, TRUSTEE,)	Adversary Proceeding No. 99-1255
)	
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
)	
AMINAH J. FOLAMI,)	
)	
Defendant.)	

Plaintiff Steven S. Davis, the Chapter 7 Trustee, moves for summary judgment on Count I of his complaint which requests revocation of Defendant-Debtor Aminah J. Folami's discharge under 11 U.S.C. § 727(d)(3) (the "Motion").¹ (Docket 10). The Debtor filed an Answer to the Motion, but does not oppose the relief requested. (Docket 11).² For the reasons stated below, the Motion is granted.

¹ Count 2 of the Complaint requested revocation of the discharge under 11 U.S.C. § 727(d)(2).

² Instead the Debtor's Answer requests that the Court "delay revoking her discharge until the end of September and for such other and further relief as may be just and equitable." (Docket 11). The requested delay is not appropriate, however, because the parties previously agreed to the schedule for submission of this matter on dispositive motions and the Trustee's Motion was filed within that schedule. (Docket 9).

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JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

FACTS

These are the undisputed material facts based on the Motion, the exhibits submitted in support of the Motion, and the parties' Joint Pretrial Statement (Docket 6, 10):

The Debtor filed a case under Chapter 7 and was granted a discharge by an order entered on May 7, 1999. On May 10, 1999 the Court entered an Order granting the Trustee's request for turnover of funds, which required the Debtor to pay \$4,221.00 to the Trustee. The Debtor has not complied with the Order and the Trustee has received no funds from the Debtor pursuant to the Order.

DISCUSSION

I.

Summary Judgment Standard

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c), made applicable by Fed. R. Bankr. P. 7056; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden is then on the non-moving party to show the existence of a material fact which must be tried. *Id.* The non-moving party

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must oppose a proper summary judgment motion "by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves" *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. American Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). Summary judgment may be granted when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Northland Ins. Co. v. Guardsman Prod., Inc.*, 141 F.3d 612, 616 (6th Cir. 1998), quoting *Agristor Fin. Corp. v. Van Sickle*, 967 F.2d 233, 236 (6th Cir. 1992).

II.

11 U.S.C. §§ 727(d)(3) and (a)(6)(A)

The Trustee argues that the Debtor's discharge should be revoked under 11 U.S.C.

§ 727(d)(3). That section provides that a discharge shall be revoked if:

- (3) the debtor committed an act specified in subsection (a)(6) of this section.

Under subsection 727(a)(6)(A), a discharge shall not be granted if:

- (6) the debtor has refused, in the case –
 - (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify[.]

11 U.S.C. §§ 727(d)(3) and (a)(6). A debtor's discharge may, therefore, be revoked under § 727(d)(3) if the debtor has refused to obey a lawful court order.

III.

The Request for Summary Judgment

The Trustee argues that he is entitled to summary judgment revoking the Debtor's discharge because the Debtor has failed to obey the Order. The Trustee has proven that the Debtor did not obey the Order and, thus, that there is no genuine issue of material fact. The Debtor has not identified any material fact which must be tried, or otherwise argued against this legal conclusion. The Trustee is, therefore, entitled to summary judgment.

CONCLUSION

For the reasons stated, the Trustee's Motion for Summary Judgment is granted. A separate judgment reflecting this decision will be entered.

Date: 15 Sept 1999

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Steven Davis, Esq.
Philip Fine, Esq.

By: Joyce L. Gordon, Secretary

Date: 9/15/99

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STEVEN S. DAVIS, TRUSTEE,)	Adversary Proceeding No. 99-1255
)	
Plaintiff,)	
)	
v.)	<u>JUDGMENT</u>
)	
AMINAH J. FOLAMI,)	
)	
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date,
IT IS, THEREFORE, ORDERED that Summary Judgment is entered in favor of the
Plaintiff, Steven S. Davis, Trustee, on Count I of the Complaint. The Defendant-Debtor's
discharge is revoked under 11 U.S.C. § 727(d)(3).

Date: 15 Sept 1999 Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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