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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED

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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 02-15096  
)  
BETTY SIMS, ) Chapter 13  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

The Debtor filed this Chapter 13 case on May 10, 2002, making it her fourth Chapter 13 filing in the past two years. (Docket 1). These are the other three cases:

Chapter 13 petition filed October 10, 2000; Case Number 00-17638. This case was dismissed on March 19, 2001 for lack of funding.

Chapter 13 petition filed on March 30, 2001; Case Number 01-12861. This case was also dismissed for lack of funding by order entered on September 25, 2001.

Chapter 13 petition filed on October 1, 2001; Case Number 01-19582. When the Debtor failed to appear at the meeting of creditors, she was ordered by the Court to appear and show cause why she failed to attend. *See* 11 U.S.C. § 341. She failed to appear at that hearing and her case was dismissed on January 10, 2002.

The Chapter 13 Trustee now moves to dismiss this fourth case, averring that the Debtor is delinquent \$2,240.00 in plan payments. (Docket 16). Given the Debtor's history of serial filings, the Trustee also asks the Court to sanction the Debtor by preventing her from filing another bankruptcy petition within the next 180 days. *See* 11 U.S.C. § 109(g)(1).

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I.

The first hearing on this motion to dismiss for lack of funding was held on September 10, 2002. The Court's general practice when a debtor falls behind on her plan payments is to permit her one final opportunity to pay the funds at the hearing on the Trustee's motion to dismiss. If a debtor still is not able to remit the funds at that hearing, her case is dismissed.<sup>1</sup> *See* Court Memorandum issued 8/26/97; available at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov) "Judges' Area." At the September 10 hearing, the Trustee stated that Debtor's counsel had given him a copy of an official bank check evidencing proof of a \$1,600.00 payment to the Trustee. The copy came from the Debtor, who faxed it to her attorney to give to the Trustee. The Trustee did not have this payment on his books and the parties agreed to an adjournment to September 24, 2002 to allow the Trustee to verify receipt.

At the adjourned hearing, the Trustee informed the Court that he did not agree that the Debtor had made a \$1,600.00 payment before the earlier hearing. The Trustee contended that the copy of the check was actually from a payment made in the Debtor's third Chapter 13 case and that she had altered it to make it appear as if she had made the payment in this fourth case to avoid having her case dismissed for lack of funding. The Debtor's counsel, having investigated the facts further during the adjournment, agreed that the \$1,600.00 check did not represent money paid to the Chapter 13 Trustee in this case and that it was an altered check from the Debtor's third Chapter 13 case. He argued, however, that the Debtor's sister altered the document without the Debtor's knowledge. In the meantime, the Debtor offered the Trustee

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<sup>1</sup> Unless a case is dismissed with sanctions, a debtor may file a motion to reinstate the case within 30 days after the dismissal if she has the delinquent funds. *See* Court Memorandum issued 7/16/96; available at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov) "Judges' Area."

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\$1,600.00 which she got as a gift from her mother in the interval between the two hearings. The Trustee stood by his motion, arguing that the payment was untimely, the Debtor was a repeat filer, and she knew that the check was altered when she sent it to her counsel. Faced with these conflicting factual arguments, the Court heard testimony from the Debtor. The Court's findings of fact are based on the Debtor's testimony, the exhibits admitted into evidence at the hearing, and the file.

**II.**

The Debtor's third case was open on July 17, 2001. On that date, the Debtor purchased official bank check No. 848723822 from National City Bank payable to Myron Wasserman, Trustee, in the amount of \$1,600.00. All items filled in on that check are typed, with the exception of the authorized signature, which is handwritten. The Debtor mailed that check to the Trustee, who apparently made a copy and then cashed it. (Exh. B). That case was later dismissed.

The Debtor's monthly plan payment in her fourth Chapter 13 case is \$1,140.00. The Debtor lives with her children and her sister. The Debtor testified as follows: in July 2002, she wanted to make a payment in her case. To do that, she gave her sister \$1,625.00 with instructions to buy a money order payable to the Trustee for \$1,600.00, to use \$5.00 for the money order fee, and to keep \$20.00 for herself. Instead of complying, her sister (who the Debtor described as a drug addict) stole the money, took a receipt from the Debtor's third case, and altered the date to fit the fourth case. The Debtor was unaware of the deception. When the Trustee moved to dismiss this case for lack of funding, the Debtor faxed the phony receipt to her

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attorney to give to the Trustee.<sup>2</sup> This is the receipt that Debtor's counsel gave to the Trustee at the September 10, 2002 hearing to prove that the case should not be dismissed for lack of funding.

The faxed document is a copy of National City Bank official check No. 848723822 payable to Myron Wasserman, Trustee, in the amount of \$1,600.00. All items are typed, except for these: the date is handwritten as July 22, 2002 and the words "case #0215096" (the fourth case number) are handwritten. (Exh. A). On cross-examination, the Trustee asked the Debtor to explain why she told her sister to send \$1,600.00 to the Trustee when the monthly amount owed in the fourth case was only \$1,140.00. The Debtor replied that she was trying to stay ahead with the Trustee.<sup>3</sup>

**III.**

On request of the Chapter 13 Trustee, and after notice and a hearing, the court may dismiss a Chapter 13 case for cause. 11 U.S.C. § 1307(c). The term cause includes, but is not limited to, failure to commence making timely payments to the Trustee. 11 U.S.C. § 1307(c)(4). Cause may also include a failure to continue to make timely monthly payments because those payments are the means by which the Trustee collects and ultimately distributes funds to creditors and pays administrative expenses as called for by the debtor's plan. Because it is the debtor who proposes the payment amount, the debtor knows the amount to be paid and the date it is due.

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<sup>2</sup> There is nothing to suggest that the Debtor's counsel was aware of or involved in the deception.

<sup>3</sup> The Trustee also elicited testimony concerning the Debtor's prior criminal convictions. The Court has not, however, considered them in reaching this decision.

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In this case, the Debtor did not have the required funds at the September 10, 2002 hearing. Normally, the Court would have dismissed the case at that time. The sole reason the case was adjourned rather than dismissed was because the Debtor represented that the Trustee had failed to credit her with a \$1,600.00 payment.

The Court does not find any aspect of the Debtor's explanation for this situation to be credible. The Court reaches this conclusion for several reasons. As an initial comment, in the Court's experience a debtor will pay the Trustee more than the amount due only on the rarest of occasions. The Debtor here would not only have the Court believe that she knowingly made an overpayment, but that coincidentally the payment was in the same amount as her payment in an earlier chapter 13 case. The Debtor then asks the Court to find that her sister was able to locate a bank check receipt amongst the Debtor's records that matched the exact amount the sister stole. And finally, although the handwritten alterations are obvious, the Debtor asks the Court to find that she did not know it was altered when she faxed the copy to her attorney for transmittal to the Trustee. The Court finds instead that the Debtor knew she had not made the required payment to the Trustee. To cover this up and buy more time, she altered a receipt from her third case and provided it to her attorney so that her case would not be dismissed at the September 10, 2002 hearing, thus holding off her creditors yet again. If the Court had known the facts at that hearing, the Court would have dismissed the case rather than adjourning it. The Debtor's deception will not be rewarded by now permitting her to fund the plan with her mother's money. The Trustee's motion to dismiss is, therefore, granted.

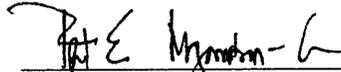
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IV.

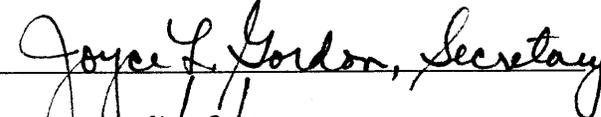
This is the Debtor's fourth chapter 13 case in the past two years. All of the cases have been dismissed before confirmation of a plan. This is the third case that was dismissed for lack of funding. At this point, the Debtor is abusing the bankruptcy system for her own purposes, which actions warrant sanctions. Therefore, the Court will grant the Trustee's motion for sanctions and impose a bar that will prevent this Debtor from filing any other bankruptcy cases for 180 days from the date on which the dismissal Order is entered in this case. *See* 11 U.S.C. §109(g)(1).

A separate order will be entered reflecting this decision.

Date: 13 Nov 02

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Craig Shopneck, Trustee  
Sebraien Haygood, Esq.

By:  Secretary

Date: 11/13/02

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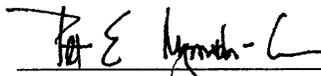
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In re: ) Case No. 02-15096  
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BETTY SIMS, ) Chapter 13  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this same date, the Trustee's Motion to Dismiss with Sanctions is granted. (Docket 16). This case is dismissed with a bar under 11 U.S.C. § 109(g)(1) against re-filing for 180 days from the date on which this Order is entered.

IT IS SO ORDERED.

Date: 13 Nov 2012

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Craig Shopneck, Trustee  
Sebraien Haygood, Esq.

By: Joyce L. Gordon, Secretary

Date: 11/13/12