

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re: ) Case No. 04-24494  
)  
GLENN THOMAS ) Chapter 13  
WHARTON, )  
) Judge Arthur I. Harris  
Debtor. )

MEMORANDUM OF OPINION

On November 12, 2004, the debtor, Glenn Thomas Wharton, filed his most recent bankruptcy case in violation of a 180-day filing bar imposed under 11 U.S.C. § 109(g). For the reasons that follow: (1) this case is dismissed with a new 180-day filing bar, (2) the debtor is ordered to pay \$338 in outstanding filing fees within fifteen days, and (3) the automatic stay of 11 U.S.C. § 362(a) shall not apply to any bankruptcy case filed in violation of this order.

BACKGROUND AND PROCEDURAL HISTORY

Mr. Wharton has filed five bankruptcy petitions in this Court in the last three years. On March 13, 2002, he filed his first Chapter 13 case, #02-12527. On December 19, 2002, he voluntarily converted the case to Chapter 7 (Docket #17). Mr. Wharton received his Chapter 7 discharge on April 9, 2003 (Docket #27).

On June 24, 2003, Mr. Wharton filed his second Chapter 13 case, #03-18294. On December 17, 2003, his case was dismissed for failure to appear at the meeting of creditors and failure to fund (Docket #14).

On January 26, 2004, Mr. Wharton filed his third Chapter 13 case, #04-10818. On March 1, 2004, the case was dismissed for failure to file a plan, schedule C, and a legal description in a timely basis (Docket #9).

On June 18, 2004, Mr. Wharton filed his fourth Chapter 13 case, #04-17762. On July 20, 2004, the Court ordered Mr. Wharton to show cause for failure to pay a filing fee installment (Docket #10). Three days later creditor Deutsche Bank National filed an objection to confirmation, a motion for relief from stay, and a motion to dismiss with prejudice and request for injunctive relief (Docket ##12, 14, 17). In its motion to dismiss with prejudice, creditor Deutsche Bank National alleged that debtor filed each prior bankruptcy petition on the eve of a foreclosure sale (Docket #17). On August 5, 2004, the debtor failed to appear at the show cause hearing. On September 9, 2004, the Court granted creditor's motion to dismiss, prohibiting debtor's refiling for 180 days (Docket #23), and ordered the debtor to pay outstanding filing fees of \$144 (Docket #21).

On November 12, 2004, Mr. Wharton filed this current Chapter 13 case only sixty-four days after case #04-17762 was dismissed with a 180-day filing bar.

## DISCUSSION

The Court has jurisdiction to hear this matter pursuant to 28 U.S.C.

§ 1334(b) and Local 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 pursuant to 28 U.S.C. § 157(b)(2).

Subsection 109(g) of the Bankruptcy Code provides:

Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

In *In re Andersson*, 209 B.R. 76 (B.A.P. 6th Cir. 1997), the Sixth Circuit Bankruptcy Appellate Panel affirmed the decision of a bankruptcy court that dismissed a case filed in violation of 109(g) and imposed a new 180-day filing bar. The debtor's filing of his most recent case in violation of a filing bar imposed under subsection 109(g) presents a scenario similar to *Andersson*. Accordingly, this case will be dismissed with the imposition of a new 180-day filing bar.

Although some courts have held that a new filing in violation of 11 U.S.C. § 109(g) is void, *see, e.g., In re Casse*, 198 F.3d 327, 342 (2d Cir. 1999); *Rowe v.*

*Ocwen Federal Bank & Trust*, 220 B.R. 591, 595 (E.D. Tex. 1997), *aff'd without published opinion*, 178 F.3d 1290 (5th Cir. 1999), this Court need not address that issue. Rather, the Court finds that it can afford creditors similar protection by ordering that the automatic stay of 11 U.S.C. § 362(a) shall not apply to any bankruptcy case filed in violation of this order. *Cf. In re Trident Associates Ltd. Partnership*, 52 F.3d 127 (6th Cir. 1995) (affirming bankruptcy court decision that retroactively lifted automatic stay because Chapter 11 case was filed in bad faith).

In addition, while dismissals for cause under 11 U.S.C. § 1307(c) provide for notice and an opportunity for a hearing, the Court believes that notice and an opportunity for a hearing are unnecessary regarding this particular dismissal for violation of 11 U.S.C. § 109(g). The record already before the Court indicates that this case was filed in violation of a 180-day filing bar imposed under subsection 109(g), making Wharton ineligible to be a debtor. Furthermore, 11 U.S.C. § 105(a) provides, in pertinent part:

No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Therefore, no purpose would be served by providing notice and hearing under the

particular circumstances of this case.

### CONCLUSION

For the foregoing reasons, (1) this case is dismissed with a new 180-day filing bar; (2) the debtor is ordered to pay \$338 in outstanding filing fees within fifteen days; and (3) the automatic stay of 11 U.S.C. § 362(a) shall not apply to any bankruptcy case filed in violation of this order.

IT IS SO ORDERED.

/s/ Arthur I. Harris     11/19/2004  
Arthur I. Harris  
United States Bankruptcy Judge