

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 04-21670
)
MARJORIE J. JUSCZAK,) Chapter 13
)
Debtor.) Judge Arthur I. Harris

ORDER DENYING RULE 9011 SANCTIONS PORTION OF CHARTER
ONE'S MOTION TO DISMISS (DOCKET #8)

On September 13, 2004, the debtor, Marjorie J. Juszczak, filed a petition under Chapter 13 of the Bankruptcy Code. On November 9, 2004, this Court granted Juszczak's motion for voluntary dismissal, which resulted in the imposition of a 180-day filing bar pursuant to 11 U.S.C. § 109(g)(2) (Docket #47). Among the motions pending when Juszczak filed her motion for voluntary dismissal was a motion of Charter One Bank, N.A., to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c), to impose a filing bar of at least one year, and to impose sanctions against the debtor and debtor's counsel pursuant to Bankruptcy Rule 9011 (Docket #8). On November 10, 2004, the Court denied all but the Rule 9011 sanctions portion of Charter One's motion to dismiss (Docket #49). For the reasons that follow, the Court now denies, without prejudice, the Rule 9011 sanctions portion of Charter One's motion to dismiss.

DISCUSSION

Rule 9011 of the Federal Rules of Bankruptcy Procedure was amended in

1997 to conform to the 1993 changes to Rule 11 of the Federal Rules of Civil Procedure. Rule 9011 provides in pertinent part:

(c) *Sanctions*. . . .

(1) *How Initiated*.

(A) *By Motion*. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b).

According to the Advisory Committee Note accompanying the 1993 Amendments to Rule 11, “requests for sanctions must be made as a separate motion, *i.e.*, not simply included as an additional prayer for relief contained in another motion.”

In the present case, Charter One did not file a separate motion requesting sanctions under Rule 9011. And while the Court’s partial denial of Charter One’s motion leaves pending only the Rule 9011 sanctions portion, the Court finds that denial, without prejudice, of the Rule 9011 sanctions portion is appropriate. “ ‘[I]n the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law.’ ” *McNeil v. United States*, 508 U.S. 106, 113 (1993) (quoting *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980)). Should Charter One promptly file a separate motion for sanctions, the Court anticipates hearing the motion during the evidentiary hearing already scheduled for December 14, 2004.

CONCLUSION

For the foregoing reasons, the Rule 9011 sanctions portion of Charter One's motion to dismiss (Docket #8) is denied, without prejudice.

IT IS SO ORDERED.

/s/ Arthur I. Harris 11/24/2004

Arthur I. Harris
United States Bankruptcy Judge