

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 06-40530
KERRY SCOTT BEESON and *
* CAROL LYNN BEESON, *
* CHAPTER 13
*
Debtors. * HONORABLE KAY WOODS
*

ORDER OF DISMISSAL

Debtors Kerry Scott Beeson and Carol Lynn Beeson ("Debtors") filed a Chapter 13 bankruptcy petition, *pro se*, on April 25, 2006. Along with the petition, Debtors filed Notice of Debtor [sic] Filing an Emergency Chapter 13 Petition Prior to Obtaining Credit Counseling ("Notice"), dated April 25, 2006. The Notice states that a foreclosure sale of the Debtors' residence is scheduled for April 25, 2006. This document, on its face, does not comport with the requirements for pre-filing credit counseling, as required by 11 U.S.C. § 109(h). As a consequence, the Court set the matter for hearing on May 3, 2006.

Debtors attended the hearing. Debtors stated that they had not utilized the services of a petition preparer, but that they had obtained the form Notice from "New Providence," an organization that was supposed to be taking action to save their home from foreclosure. Debtors represented that they paid New Providence Seven Hundred Dollars (\$700.00) for their services. Debtors conceded that they had not sought nor obtained the required credit counseling prior to filing the bankruptcy petition. Debtors stated that they first contacted a credit counseling agency on May 1, 2006 and that they were scheduled for the counseling on May 15, 2006.

Section 109 of the Title 11 of the United States Code, Bankruptcy Abuse Prevention and Consumer Protection Act, describes "Who may be a debtor." Section 109(h)(1) provides:

. . . an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(1).

Section 109(h)(3) provides certain exceptions to the requirement for the pre-filing briefing by an approved credit counseling agency, as follows:

. . . the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that --

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services . . . during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

11 U.S.C. § 109(h)(3).

Although Debtors have set forth exigent circumstances, they have failed to establish that they timely requested credit counseling services, but were not able to obtain such services during the five day period beginning on the date they made the request. Debtors did

not request credit counseling services until six days after the petition was filed. Debtors did not attempt to obtain such services prior to filing the Chapter 13 petition. As a consequence, this Court must dismiss Debtors' Chapter 13 case for failure to meet the requirements of who may be a debtor, as set forth in 11 U.S.C. § 109(h).

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**