

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 06-40565
WANDA D. YORK, *
* CHAPTER 13
*
Debtor. * THE HONORABLE KAY WOODS
*

ORDER DISMISSING CHAPTER 13 CASE FOR FAILURE
TO COMPLY WITH 11 U.S.C. § 109(h)

Debtor Wanda D. York ("Debtor") filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on May 1, 2006 (the "Petition Date"). On that same date, she filed an Affidavit that purports to comply with 11 U.S.C. § 109(h)(3)(A). For the reasons set forth below, this Court finds that the Affidavit does not comply with all of the requirements in Section 109(h)(3)(A) and, accordingly, dismisses the instant Chapter 13 case.

The Court held a hearing on May 11, 2006 to determine if Debtor met the requirements in Section 109(h)(3)(A) that would relieve her of the obligation in Section 109(h)(1), which states that "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[.]" Debtors are relieved of the requirement in Subsection (1) of Section 109(h) if they comply with the requirements in Subsection (3)(A). That subsection provides:

(3)(A) Subject to subparagraph (B), 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 referred to in paragraph (1) 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) (A).

Debtor's Affidavit states that her residence was scheduled for sheriff's sale on the Petition Date. Debtor further states that she "attempted to obtain the budget and credit counseling in compliance with § 109 of the Bankruptcy Code via the internet on Saturday, April 29, 2006, Sunday, April 30, 2006 and on Monday morning, May 1, 2006. However, I was unable to complete the counseling prior to filing my Chapter 13 petition." (Affidavit, ¶ 3.)

At the hearing, Debtor stated that she had also tried to obtain the counseling on Friday night, April 28, 2006. In response to the Court's question about why she couldn't complete the briefing, she stated that, after she completed the information via the internet on Sunday, April 30, she received a screen that indicated she would have to talk with someone at the credit counseling agency by telephone the next day in order to complete the training. She further stated that the credit agency called her on Monday, May 1, 2006, but she didn't complete the briefing until Tuesday, May 2, the day after the Petition Date.

The Court does not have to decide whether Debtor has

described exigent circumstances, as required in Section 109(h)(3)(i) because Debtor fails to meet the requirement in Section 109(h)(3)(ii). In order to be excused from obtaining credit counseling briefing during the 180-day period prior to filing a bankruptcy petition, a debtor must establish that she "requested credit counseling services from an approved . . . agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request[.]" 11 U.S.C. § 109(h)(3)(ii). Debtor's Affidavit demonstrates that she first requested credit counseling services on Saturday, April 29, 2006, which is three (3) days prior to the date she filed her petition. She completed credit counseling services on Tuesday, May 2, 2006, which is four days after she first requested the counseling services. Thus, she fails to demonstrate that she was "unable to obtain the services . . . during the 5-day period beginning on the date [she] made that request[.]" *Id.* Even if Debtor's unsworn statement at the hearing is taken into consideration that she first made the request on April 28, 2006, she still cannot establish that she was unable to obtain the credit counseling services in the 5-day period beginning on the date she first made the request. May 2, 2006 is five (5) days after April 28, which indicates that Debtor actually obtained credit counseling services in the 5-day time frame - the Code requires that she be "unable" to obtain the services in those five (5) days.

As a consequence, this Court hereby dismisses Debtor's Chapter 13 case for failure to comply with the credit counseling requirement in 11 U.S.C. § 109(h).

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE