

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: October 13 2006

A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|------------|---|------------------------|
| In Re: |) | Case No. 06-31781 |
| |) | |
| Amy Holben |) | Chapter 7 |
| |) | |
| Debtor(s). |) | |
| |) | JUDGE MARY ANN WHIPPLE |

ORDER

This case is before the court upon Debtor Amy Holben's Reaffirmation Agreement with National City Mortgage Co. ("Reaffirmation Agreement") [Doc. # 12] and her motion to withdraw the Reaffirmation Agreement and vacate the hearing set on it ("Motion") [Doc. #15].

The court had set the Reaffirmation Agreement for hearing on October 10, 2006, because Debtor's Part D therein is completely different than the Schedules I and J filed in this case. The hearing did not go forward due to the filing of the Motion. It appears that Debtor no longer intends to proceed with the Reaffirmation Agreement. Therefore, the court will vacate the hearing as requested.

However, to the extent that by "withdrawing" the Reaffirmation Agreement Debtor intends to rescind it, the Motion will be denied. Rescission is not accomplished under 11 U.S.C. § 524 by motion and court order. The statute provides that "[t]o rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (cancelled)." 11 U.S.C. § 524(k)(3)(J)(i). The

Reaffirmation Agreement filed with the court specifies an address to which notice of the rescission is to be sent. Rescission is thus contemplated as a unilateral act to be completed by a debtor within a given period of time without court involvement. The court does not know whether Debtor has sent notice of rescission to the creditor; thus it will not render any kind of advisory or comfort order. Moreover, given Congress' statutory direction that the debtor, not the Clerk or the court, is to notify the creditor of rescission, the court declines to insert itself into the process and thereby create potential disputes down the road as to whether Debtor's motion or this order amounts to "notifying" the creditor and effecting a proper rescission of the Reaffirmation Agreement under the Bankruptcy Code. If Debtor wants to rescind her Reaffirmation Agreement, she needs to do what the Bankruptcy Code directs.

IT IS ORDERED that Debtor's motion to withdraw the Reaffirmation Agreement and vacate the hearing set on it [Doc. #15] is **GRANTED** in part and **DENIED** in part as provided in this order; and

IT IS FURTHER ORDERED that the hearing on the Reaffirmation Agreement is vacated; and

IT IS FINALLY ORDERED that the Reaffirmation Agreement is not deemed rescinded, vacated or withdrawn by the filing of the Motion with the court or this order of the court.