

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: November 03 2006

A handwritten signature in blue ink, appearing to read "Mary Ann Whipple".

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 06-31968
)	
Brandon Angelo Mannino)	Chapter 7
Erica Dawn Mannino)	
)	
Debtor(s).)	JUDGE MARY ANN WHIPPLE

ORDER

On October 6, 2006, an attorney for the Hicksville Savings and Loan Association electronically filed a reaffirmation agreement. [Doc. #14]. The docket entry that counsel created upon electronic filing states that it is a motion for approval of reaffirmation agreement. The clerk entered a corrective entry requesting that the reaffirmation agreement be re-filed using the filing code for same, which it was, *see* Doc. #15, and that the “motion” either be re-filed or withdrawn. No further action in that regard has occurred.

Under 11 U.S.C. § 524 (c)(6), (d) and (k)(7), taken together, affirmative approval of reaffirmation agreements is required only when a debtor is not represented by an attorney and the debt in issue is other than a consumer debt secured by real property. Under BAPCPA, the new subparts of § 524 ((j)-(m)) were for the most part simply layered on top of the existing parts of § 524 addressing reaffirmation agreements. The new parts did not create new situations where affirmative court approval is required beyond those already existing. Rather, they added circumstances where bankruptcy courts may under certain circumstances disapprove reaffirmation agreements even where a debtor is represented by counsel. And

in those limited instances where affirmative approval is required, the motion may be made by the debtor, not the creditor. Debtors are represented by counsel in this case and in connection with the reaffirmation agreement, therefore, no affirmative court approval of the reaffirmation agreement is required and no motion for approval is necessary or appropriate, by whomever filed.

In this instance Part D of the reaffirmation agreement shows that the presumption of undue hardship arises. If the court after review is considering disapproval, it will separately set a hearing to address the reaffirmation agreement without motion by either party, which is what § 524(m)(1) requires it to do. In the absence of any such hearing, which must be concluded before entry of discharge, the presumption will expire 60 days after filing of the reaffirmation agreement. That is why the Clerk was so particular in requiring the reaffirmation agreement to be properly filed and noted with a separate docket entry for the agreement itself; the filing date is a date of statutory significance for several purposes. *See* 11 U.S.C. § 524(k)(3)(J)(i)(6) and (7), (m)(1). The filing date must therefore be clearly noted on the court record, which the initial docket entry failed to do. However, as no further action has been taken to withdraw the motion per the clerk's corrective entry, the court hereby denies it for the reasons set forth above.

IT IS THEREFORE ORDERED that the Motion for Approval of Reaffirmation Agreement as so denominated in the docket entry of October 6, 2006, [Doc. # 14] is hereby **DENIED**.