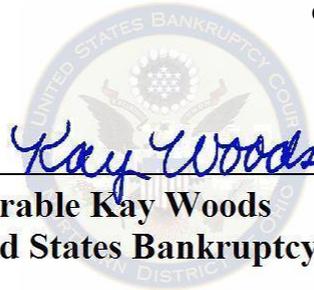


IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	CASE NUMBER 08-43517
	*	
MARY ALICE McCALL,	*	CHAPTER 13
	*	
Debtor.	*	HONORABLE KAY WOODS
	*	

ORDER OF DISMISSAL

Debtor Mary Alice McCall ("Debtor"), acting *pro se*, filed a voluntary chapter 13 petition on December 1, 2008 ("Petition Date"). Debtor's case is hereby dismissed, as set forth below in detail.

A. Show Cause Order

On January 22, 2009, the Court entered an order directing Debtor to appear and show cause why the Court should not dismiss this bankruptcy proceeding based upon the failure of Debtor to file Schedules A - J, Summary of Schedules with Statistical Summary,

Statement of Financial Affairs, Chapter 13 Plan, Means Test Form-22A, Employee Income Records, Certificate of Credit Counseling, and Matrix - List of All Creditors ("Show Cause Order").

Subsequent to the Show Cause Order, Debtor filed Schedules B - H, Chapter 13 Plan, and an incomplete Means Test. A hearing on the Show Cause Order was held on February 5, 2009 ("OSC Hearing"). Debtor failed to appear and show cause or file the remaining documents identified in the Show Cause Order.

B. Certificate of Credit Counseling

Debtor filed a Certificate of Credit Counseling on December 16, 2008, which demonstrated that Debtor received her credit counseling on December 11, 2008, eleven days after the Petition Date.

11 U.S.C. § 109 is captioned "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) (West 2008).

Section 109(h)(3) provides certain exceptions to the requirement for pre-petition credit counseling, 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) (West 2008).

Pre-petition credit counseling, as set forth in § 109(h), is a mandatory eligibility requirement for filing a bankruptcy petition unless the debtor meets the exception requirements in § 109(h)(3). In the instant case, Debtor has not established that she requested credit counseling and was not able to obtain such counseling in the five-day period prior to the Petition Date. In addition, Debtor has failed to set forth exigent circumstances that merit a waiver of the credit counseling requirement. Moreover, neither § 109(h) nor any other Bankruptcy Code section permits Debtor to file a motion to extend time to obtain the credit counseling required by § 109(h).

C. Bad Faith

11 U.S.C. § 1307 provides for dismissal of a chapter 13 case "for cause," followed by a non-exhaustive list of possible factors. "[A] bankruptcy court has the power to dismiss a Chapter 13 petition upon a finding that the debtor did not bring it in good faith." *Alt v. United States (In re Alt)*, 305 F.3d 413, 418 (6th Cir. 2002). "The key inquiry in such cases is whether the

debtor is seeking to abuse the bankruptcy process." *Id.* at 419.

Several factors indicate that Debtor filed this case in bad faith. The Court is cognizant that Debtor is proceeding *pro se*, but Debtor is experienced in the bankruptcy process. This is Debtor's third bankruptcy filing in less than four years. Debtor was represented by legal counsel in a chapter 7 bankruptcy case (Case No. 05-40306) in which she received a discharge. Debtor represented herself in a chapter 13 case (Case No. 06-41379), which was dismissed upon the motion of the Standing Chapter 13 Trustee.

Despite the fact that more than sixty (60) days have passed since the Petition Date, Debtor has failed to timely file many of the documents required to be filed with the petition or within fifteen (15) days after the Petition Date. Significantly, Debtor has failed to file either Schedule I or any payment advices. Therefore, it is impossible to determine whether Debtor has a "regular income" that would qualify her for chapter 13. See, 11 U.S.C. § 109(e). Debtor has also failed to file the Creditor Matrix, thus preventing the Court from serving notice of the § 341 Meeting of Creditors or otherwise notifying creditors of Debtor's pending bankruptcy.

Debtor filed three handwritten letters requesting more time in this case. On December 16, 2008, Debtor filed a letter seeking time to retain an attorney (Doc. # 10). The Court deemed this letter to be a motion for an extension of time to file all of the required (but missing) documents in Debtor's case. As a consequence, pursuant to order dated December 16, 2008 (Doc. # 11),

the Court granted Debtor an extension of thirty (30) days - *i.e.*, until January 15, 2009 - to file all of the missing documents.

Debtor failed to file any of the missing documents by January 15, 2009. To the extent Debtor has since filed some of the missing documents, they were not timely filed. Instead of complying with the Court's order, on January 15, 2009, Debtor filed a second letter (Doc. # 14) seeking an additional 15 day extension of time. By order dated January 16, 2009 (Doc. # 16), the Court denied Debtor's second request for additional time, finding that "Debtor had already had forty-five days to file the missing documents and has stated no valid reason to extend the time further to do so."¹

On January 22, 2009, Debtor appeared at the hearing on Order to Appear and Show Cause for Failure to Make First Chapter 13 Filing Fee Installment Payment, at which time the Court informed Debtor that (i) the missing documents had not been timely filed; (ii) a Show Cause Order would issue regarding the missing documents; and (iii) the case would be dismissed if the missing documents were not filed. When Debtor informed the Court that she would file the list of creditors either January 22 or 23, 2009, the Court responded that all missing documents needed to be filed.

On February 3, 2009, the day before the OSC Hearing,² Debtor filed a third request for additional time, although she did not articulate the reason for the additional time or how much time

¹The Court does not here comment on whether this case may have been automatically dismissed on the 46th day after the Petition Date, pursuant to 11 U.S.C. § 521(i)(1).

²February 3, 2009, is sixty-four (64) days after the Petition Date.

she requested. By order dated February 4, 2009 (Doc. # 23), the Court denied Debtor's third request for additional time.

Conclusion

For the reasons given above, this case is hereby dismissed for Debtor's: (i) failure to prosecute this case; (ii) failure to comply with an Order of the Court; (iii) failure to meet the requirements of who may be a debtor, as set forth in 11 U.S.C. § 109(h); and (iv) lack of good faith.

Debtor has not paid the remaining balance of the chapter 7 filing fee. As a result, Debtor owes a balance of \$160.00 ("Balance of Fee"). Debtor is ordered to pay the Balance of Fee within fifteen (15) days after entry of this Order.

Debtor is barred from filing another bankruptcy petition until both (i) the Balance of Fee is paid in full, and (ii) more than 180 days have passed from the date of this Order.

IT IS SO ORDERED.

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