

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 10-12437
)
CINSEREE JOHNSON,) Chapter 7
aka/dba CASCIN, INC.,)
Debtor.) Judge Pat E. Morgenstern-Clarren
) **MEMORANDUM OF OPINION**¹

The United States trustee moved to dismiss this case with sanctions, and set it for hearing on May 6, 2010. (Docket 16, 17). The court issued an order on the debtor to appear and show cause regarding her failure to file required documents, setting it for the same hearing date. (Docket 19). After that, the debtor filed a “Notice of Dismissal.” (Docket 22). Counsel for the United States trustee appeared at the May 6th hearing, but the debtor did not. As the debtor agrees that the case should be dismissed, the issue is whether the dismissal should be with sanctions. For the reasons discussed below, the court finds that the case will be dismissed with a 180-day bar against refiling a bankruptcy case under any chapter of the Bankruptcy Code in any court.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

¹ This opinion is not intended for publication in an official reporter, either electronic or print.

THE REQUEST TO DISMISS WITH SANCTIONS

The United States trustee argues that the case should be dismissed with a one year bar against refiling for these reasons: this is the fifth bankruptcy case filed by the debtor since 2008; the earlier cases have all been dismissed for failure to prosecute; the debtor lists “Cascin, Inc.” as her “dba” and “aka” in the present case, but non-lawyers cannot represent a corporation in federal court; and the debtor filed this case in bad faith.

THE DEBTOR’S HISTORY OF BANKRUPTCY FILINGS

July 7, 2008 Case 08-15177 (N.D. Ohio)

The debtor filed this chapter 7 case without filing a list of creditors, Exhibit D to Official Form 1, certificate of credit counseling, employee income record, summary of schedules, statistical summary of liabilities, and information regarding real property. After the filing time expired, the court issued show cause orders as to why the case should not be dismissed. The debtor moved for additional time, which the court granted. The court granted the debtor’s application to waive the court filing fee. Eventually, the United States trustee moved to dismiss the case because the debtor had not established that she had taken the required credit counseling. The court granted the motion on October 16, 2008.

October 21, 2008 Case 08-18112 (N.D. Ohio)

The debtor filed this chapter 7 case without filing a list of creditors, employee income record, summary of schedules, statistical summary of liability, or information regarding real property. During the course of the case, the debtor filed motions to waive the filing fee and motions to pay the filing fee in installments. The court denied the former and granted the latter. On January 30, 2009, the debtor moved to convert the case to chapter 13, setting the hearing for March 12, 2009.

The debtor filed a notice to dismiss her case on February 20, 2009. She then moved to strike her notice of dismissal, which the court granted. The court dismissed the case on June 9, 2009 for failure to pay the filing fee, file a chapter 13 plan, or appear at the show cause hearing set on these issues. At the time the case was dismissed, the debtor had not yet appeared for examination under 11 U.S.C. § 341 due to delay attributable to the debtor.

July 6, 2009 Case 09-57585 (S.D. Ohio-Columbus)

The debtor filed this chapter 7 case in Columbus, Ohio. On November 6, 2009, the Hon. Charles Caldwell dismissed the case on motion of the chapter 7 trustee and a creditor for failure to appear at § 341 hearings and failure to file documents. The court found that the debtor had abused the bankruptcy system based on the earlier filings and dismissed the case with a 180-day bar against refiling under Title 11.

December 4, 2009 Case 09-21476 (N.D. Ohio)

The debtor filed this chapter 13 case without filing a list of creditors, schedules, statement of financial affairs, plan, employee income record, means test form, exhibit D to Official Form 1, and the credit counseling certificate. The debtor moved to pay the filing fee in installments, which the court ultimately granted. The court issued a show cause order directing the debtor to appear on January 5, 2010 and explain why the case should not be dismissed for failure to file required documents. At the hearing, the United States trustee moved to dismiss because the case was filed in violation of Judge Caldwell's order. The debtor appeared at the hearing and contested the motion to dismiss. The court dismissed the case because the debtor had failed to meet her obligations under the Bankruptcy Code and because she filed the case in violation of Judge Caldwell's order.

The debtor filed a motion to reconsider, which was denied, and a motion to reconsider the motion to reconsider, which was also denied. She filed a motion to stay which was denied, and an appeal which has been dismissed for lack of prosecution.

March 23, 2010 Case 10-12437 (N.D. Ohio)

The debtor listed herself on the first page of her chapter 7 petition as “Cinseree Johnson dba Cascin Inc.” She signed on page 3 as “Cascin Inc., Statutory Agent.” Debtors are required to state on the petition all other bankruptcy cases filed within the last 8 years; the debtor did not list her four other cases. Debtors are required to timely file a list of creditors, a certificate of credit counseling, employee income records, the means test, schedules A-J, statement of financial affairs, and a summary of schedules. The debtor did not do so.

On March 31, 2010, the United States trustee moved to dismiss the case with sanctions. On April 8, 2010, the court issued an order directing the debtor to appear on May 6, 2010 to show cause regarding her failure to file required documents. On April 27, 2010, the debtor filed a “Notice of Dismissal.” The United States trustee appeared at the May 6 hearing, but the debtor did not.

DISCUSSION

I.

Generally, a debtor who wishes to dismiss a chapter 7 case must give at least 21 days notice to parties in interest. *See* FED. R. BANKR. P. 2002(a)(4); 9 COLLIER ON BANKRUPTCY ¶ 2002.02[6][d] (15th ed. rev. 2009). Simply filing a notice of dismissal is ineffective to dismiss the case. As a result, when the debtor filed her notice of dismissal after the United States trustee filed the motion to dismiss with sanctions, the notice did not serve to dismiss the case. The

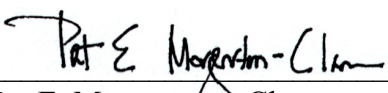
court, therefore, has jurisdiction to consider the request to impose sanctions in connection with the dismissal of this case.

II.

A case may be dismissed if, among other things, the debtor caused unreasonable delay which was prejudicial to creditors. 11 U.S.C. § 707(a)(1). A dismissal with sanctions is appropriate where the dismissal is based on the debtor's failure to appear in proper prosecution of the case or to follow court orders. 11 U.S.C. § 109(g)(1). Additionally, Bankruptcy Code §§ 105(a) and 349(a) provide authority for this court to prohibit a debtor from making future bankruptcy filings. *In re Grischkan*, 320 B.R. 654, 660-61 (Bankr. N.D. Ohio 2005). In this case, the debtor has filed five bankruptcy cases, each of which has been dismissed for failure to comply with the debtor's fundamental obligations and one of which was filed in direct violation of Judge Caldwell's order. This warrants dismissal based on unreasonable delay which prejudiced creditors and provides ample support for the UST's request to impose sanctions. Although the UST asks for a one-year bar on the ground that a shorter period of time will not permit creditors to pursue their state court remedies, the court finds that a 180-day bar will likely serve that purpose.

CONCLUSION

For the reasons stated, the United States trustee's motion is granted and the debtor's case is dismissed with a 180-day bar against filing a bankruptcy case under any chapter of Title 11 in any court. A separate order will be entered to this effect.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
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In re:) Case No. 10-12437
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Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion entered this same date, the United States trustee's motion to dismiss with sanctions is granted and Cinseree Johnson is barred from filing a new bankruptcy petition under any chapter of the bankruptcy code in any court for a period of 180 days from the date on which this order is entered. (Docket 16).

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge