

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 was signed electronically at the time and date indicated, which may be materially different from its entry on the record.



Dated: 11:23 AM May 15, 2013



Russ Kendig  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: ) CHAPTER 13  
)  
THOMAS ADOLPH SEIDL, ) CASE NO. 12-62955  
)  
Debtor. ) JUDGE RUSS KENDIG  
)  
) **MEMORANDUM OF OPINION**  
) **(NOT FOR PUBLICATION)**  
)

Debtor's motion to voluntarily dismiss his case is before the court. Debtor filed the motion on April 11, 2013. Although the motion was served on various parties, no notice was provided. No objections were filed.

The court has jurisdiction of this case under 28 U.S.C. § 1334 and the general order of reference entered in this district on April 4, 2012. In accordance with 28 U.S.C. § 1409, venue in this district and division is proper.

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

**BACKGROUND**

On October 31, 2012, Debtor filed a chapter 7 petition. The United States Trustee filed a Statement of Presumed Abuse on December 15, 2012. Subsequently, on January 30, 2013, on Debtor's motion, the court issued an order converting the case to chapter 13. Debtor has yet to

confirm a plan. He filed a motion to dismiss the case on April 11, 2013.

### **DISCUSSION**

Section 1307(b) of the bankruptcy code allows a debtor to dismiss a case as a matter of right as long as the case has not previously converted from chapter 7, 11 or 12. When a debtor seeks to dismiss a converted case, Collier's suggests that dismissal is governed by sections 1307(c) or (d):

There is no absolute right on the part of the debtor to obtain a dismissal of a case converted to chapter 13 from chapter 7 . . . . Instead, the debtor . . . may request dismissal or conversion of the chapter 13 case pursuant to section 1307(c) or (d). The court, after notice and a hearing, may either dismiss, convert the case to chapter 7 or convert the case to chapter 11 or chapter 12 prior to the confirmation of a chapter 13 plan. If the debtor requests dismissal and a creditor requests conversion, the decision depends on the best interest of the estate and its creditors as determined, like all matters under section 1307(c), in the court's discretion.

8 Collier on Bankruptcy, ¶ 1307.03[2], p. 1307-10 (16<sup>th</sup> ed). This imposition of notice means that a debtor in a converted case is not entitled to dismissal as a matter of right. Federal Rule of Bankruptcy Rule 1017(a) directs

(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION OR OTHER CAUSE. Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002. For the purpose of the notice, the debtor shall file a list of creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the debtor or another entity to prepare and file it.

In this case, Debtor's previous conversion from chapter 7 to chapter 13 rendered him unable to seek dismissal as a matter of right. Rather, Debtor needed to provide notice in accordance with Rule 1017(a). Since Debtor failed to do so, his motion to dismiss cannot be granted. The court will enter an order denying the motion without prejudice.

# # #

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