

1-22-04

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
NEMIAH T. CHEATHEM)	CASE NO. 02-99116
)	
Debtor)	

ORDER

This case was filed as a Chapter 13 case September 3, 2002. Debtor's Chapter 13 plan was confirmed December 7, 2002. Debtor converted this case to a Chapter 7 case August 20, 2003. Notice of the conversion, together with notice of the Chapter 7 §341 meeting of creditors, was mailed to creditors and parties in interest. The §341 meeting was originally scheduled for September 23, 2003. The deadline for Debtor to file his Statement of Intention was September 22, 2003.¹ The Clerk's docket shows that on September 23, 2003, the day of the §341 meeting of creditors, the §341 meeting of creditors was rescheduled to October 21, 2003. As is the custom and practice in this district when the rescheduling of the §341 meeting is announced at the meeting itself, no written notice was generated or mailed to Debtor, Debtor's attorney, or creditors and parties in interest. The rescheduling of the §341 meeting was, however, entered on the Clerk's electronic docket of this case, which is available to be viewed online at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users). Debtor filed his Chapter 7 Schedules and

¹ Debtor is required by 11 U.S.C. §521(2) and Bankruptcy Rule 1019 to file a statement of his intention with respect to the retention or surrender of property of the estate which secures claims which are consumer debts.

Statement of Financial Affairs October 14, 2003. Debtor has not, however, filed a Statement of Intent and Debtor's attorney has not filed a Bankruptcy Rule 2016 disclosure of compensation. On October 21, 2003, the Chapter 7 Trustee entered a report that Debtor failed to appear at the rescheduled §341 meeting of creditors and requested dismissal of this case. This case was dismissed and closed October 23, 2003.

On November 5, 2003, Debtor filed a motion to reopen this case. The only cause Debtor alleged for reopening was that he "needs the case reopened to attend the 341 meeting." Debtor, however, did not request that the order dismissing this case be vacated. The U.S. Trustee filed a response to Debtor's motion to reopen November 18, 2003. The U.S. Trustee reported that, at the time this case was dismissed, the U.S. Trustee was reviewing this file for dismissal under §707(b). The U.S. Trustee also pointed out that the deadlines for filing a complaint to determine dischargeability, an objection to discharge, and a motion to dismiss under §707(b) expired November 24, 2003. Finally, the U.S. Trustee noted that Debtor failed to set forth cause for reopening this case.

By order entered December 2, 2003, Debtor was directed to file a written reply to the U.S. Trustee's response to Debtor's motion to reopen. Debtor's attorney was also directed to serve a copy of the order upon all creditors and file a certificate of such service. No such certificate of service has been filed. Additionally, although Debtor filed a reply to the U.S. Trustee's response to Debtor's motion to reopen, Debtor failed to set forth in that reply any grounds for reopening the case. Debtor alleged that he "was not given official notice" of the rescheduled §341 meeting. Notice of the rescheduled meeting was available on the electronic

docket of this case, however, from the date of its entry September 23, 2003, at all times going forward. Debtor failed in his reply to request that the dismissal order be vacated, and failed to address his failure to file a Statement of Intention or Debtor's attorney's failure to file a Bankruptcy Rule 2016 disclosure statement.

Pursuant to 11 U.S.C. §350(b), a case may be reopened "to administer assets, to accord relief to the debtor, or for other cause." Bankruptcy Rule 5010 provides:

a case may be reopened on motion of the debtor or other party in interest pursuant to §350(b) of the Code. In a Chapter 7 or a Chapter 13 case a trustee shall be appointed unless the court determines that a trustee is not necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.

A decision to reopen a case pursuant to §350(b) is within the discretion of the bankruptcy court. *In re Blossom*, 57 B.R. 285 (Bankr. N.D. Ohio 1986). Debtor has failed to set forth facts sufficient to constitute cause to reopen this case. Accordingly, it is hereby

ORDERED that Debtor's motion to reopen is denied.

IT IS SO ORDERED, this the 21 day of January, 2004.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE