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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
MICHAEL T. HUGHES,)	CASE NO. 04-98206-MHM
)	
Debtor.)	

)	
UNIFUND FINANCIAL CORP.,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
MICHAEL T. HUGHES,)	
)	
Respondent.)	

**ORDER DISMISSING CASE AND PROHIBITING DEBTOR FROM
FILING NEW PETITION FOR A PERIOD OF 180 DAYS**

This matter arose upon the motion of creditor UniFund Financial Corporation (“UniFund”) to dismiss this case with a bar to refile for a period of five (5) years (the “Motion”). Hearing upon notice was held January 30, 2007, at which the following persons were present: John T. Sparks, Sr., Esq., Counsel for UniFund; Neal C. Gordon, Esq., Chapter 7 Trustee; and Annette K. McBrayer, Esq., Counsel for Creditors McCraw and Old Republic Title Insurance Co. Debtor neither in person or through counsel despite notice given Debtor at the address listed on his petition, at his last known physical address, and to his counsel of record, P. Bruce Kirwan, Esq.

Debtor spent approximately a year incarcerated pursuant to an order entered by the undersigned because of his failure to appear for a §341(a) meeting of creditors and his failure to appear for Rule 2004 examination by Unifund and comply with an order to produce certain documents. Debtor appeared July 21, 2006, for a §341(a) meeting of creditors, which was held and completed that day. Following the conclusion of the §341(a) meeting of creditors, Debtor appeared for a Rule 2004 examination. Unifund asserts that Debtor failed to fully comply with Unifund's request for production of documents.

A Chapter 7 case may be dismissed under §707(a) for cause.¹ Bad faith is not one of the reasons listed in §707(a) as illustrative of "cause." Case law is unsettled as to whether bad faith constitutes cause for dismissal under §707(a). *Tameki v. Frank*, 229 F. 3d 205 (3d Cir. 2000) (bad faith constitutes "cause"); *Neary v. Padilla*, 222 F. 3d 1184 (9th Cir. 2000) (bad faith does not constitute "cause"); *Huckfeldt v. Huckfeldt*, 39 F. 3d 829 (8th Cir. 1994) (conduct constituting "cause" for dismissal of Chapter 7 case may be characterized as bad faith, but bad faith does not necessarily constitute "cause"); *Industrial Insurance Services, Inc. v. Zick*, 931 F2d 1124 (1991) (bad faith constitutes "cause"); *In re Farkas*, 343 B.R. 346 (Bankr. S.D. Fla. 2006) (bad faith does not constitute "cause").

¹ Under the Bankruptcy Code in effect at the time Debtor filed this case, dismissal under §707(b) for substantial abuse was available only on motion filed by the U.S. Trustee, not on a motion filed by a creditor.

In the instant case, Unifund has shown that Debtor's failure to appear in the proper prosecution of this case has resulted in unreasonable delay prejudicial to creditors. While that delay may have resulted from Debtor's lack of good faith, and while that unreasonable delay constitutes cause for dismissal, it does not constitute cause for barring Debtor from access to bankruptcy protection from a period longer than prescribed in §109(g). This Chapter 7 bankruptcy case is Debtor's first bankruptcy case. A bar to refiling longer than the 180 days provided in §109(g) may be available under §105, but the more lengthy bar must be based upon conduct more egregious than Debtor's conduct has been in this bankruptcy case. Usually, the grounds for the more lengthy bar arise from multiple filings in which the debtor fails to fulfill the duties prescribed by the Bankruptcy Code. Unifund has failed to show grounds to support a conclusion that Debtor should be barred from filing a bankruptcy petition longer than 180 days. Accordingly, it is hereby

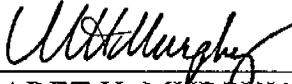
ORDERED that, pursuant to 11 U.S.C. §§707(a), the motion to dismiss is *granted* and Debtor's case is *dismissed*; provided, however, that this court retains jurisdiction to rule on any application for compensation filed by the Chapter 7 Trustee within 45 days of the date of entry of this order. It is further

ORDERED that, for willful failure of Debtor to abide by orders of the court and to appear in proper prosecution of the case, Debtor is barred from refiling a petition

pursuant to Title 11, U.S. Code (11 U.S.C. §101 *et seq.*) for a period of 180 days from the date of entry of this order.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, counsel for Debtor, Movant, counsel for Movant, the Chapter 7 Trustee, and all creditors and parties in interest.

IT IS SO ORDERED, this the 31st day of May, 2007.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE