

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CHAPTER 7
: :
JAMES DEMARCO BOGAN, : CASE NO. 11-77196 - MHM
: :
Debtor. : :

DISMISSAL ORDER

On February 21, 2012, the United States Trustee filed a *Motion to Dismiss Case for Cause* (Doc. No. 32) (the "Motion"), seeking entry of an order dismissing this chapter 7 case based, *inter alia*, on the failure of the putative Debtor, James DeMarco Bogan, to sign the petition, schedules, and statement of financial affairs, to appear and submit to examination at the section 341 meeting of creditors, and to provide a copy of his most recent federal income tax return to the chapter 7 trustee. On February 23, 2012, an *Order and Notice of Hearing and Deadline to Object to Motion to Dismiss* was entered [Doc. No. 33], requiring any objections to the Motion to be filed in writing on or before March 13, 2012, failing which the requested relief could be granted without further notice or hearing. The Order and Notice was served upon Debtor, creditors and other parties in interest in accordance with Fed. R. Bankr. P. 2002(a) (Doc. No. 34); no objections to the Motion have been filed. Nevertheless, on March 19, 2012, a second Order and Notice was entered scheduling a reset hearing on the Motion for April 17, 2012. That Order and Notice was likewise served on Debtor, creditors and other parties in interest in accordance with Fed. R. Bankr. P. 2002(a), and the reset hearing took place as scheduled April 17, 2012. The only appearance at the hearing was by James H. Morawetz as counsel for the United States Trustee.

This case commenced September 1, 2011, with the filing of a voluntary petition for relief under chapter 7 of the Bankruptcy Code (Doc. No. 1) (the "Petition"). The Petition was signed by Gwendolyn Kay Humphrey as "POA for James DeMarco Bogan." Attached to the Petition is an undated "Power of Attorney," which purports to have been signed by James Bogan (not James DeMarco Bogan, the name of the putative debtor), granting authority to Gwendolyn Kay Humphrey "to handle all of my legal affairs." However, the document goes on to refer to the "legal affairs" at issue as "concerning my home at 3445 Herschel rd. (sic) in Colledge (sic) Park, Ga. 30337 which is also involved in a civil action filed as case no 1:10-cv-01426-TWT and appeal no. 10-14154-C," and to state that Ms. Humphrey "will also have power to be my legal council (sic) with any and all matters with the SUPERIOR COURT OF DEKALB COUNTY." The Power of Attorney does not specifically authorize Ms. Humphrey to file a bankruptcy petition on Debtor's behalf, nor does it contain any language to suggest that it was executed in contemplation of a bankruptcy filing.

"[A]n attorney-in-fact may commence a bankruptcy case on behalf of a debtor so long as: (1) the debtor qualifies as a debtor under 11 U.S.C. § 109, (2) the commencement of a bankruptcy case is within the scope of authority granted to the attorney-in-fact, and (3) such action by the attorney-in-fact does not constitute the practice of law." *In re O'Connor*, 2009 WL 1616105, *2 (Bankr. N.D. Ohio 2009), citing *In re Curtis*, 262 B.R. 619, 622 (Bankr. D.Vt. 2001), and *In re Hurt*, 234 B.R. 1, 2 (Bankr. D.N.H. 1999). The filing of a bankruptcy petition on Debtor's behalf does not appear to be within the scope of authority granted to Ms. Humphrey by the Power of Attorney attached to the Petition in this case. Nothing in the record suggests that Ms. Humphrey is a licensed attorney, and

DISTRIBUTION LIST

Pursuant to Local Rule 9013-3(d)(2) for the United States Bankruptcy Court, Northern District of Georgia, the Clerk of the Court is directed to serve copies of this order on the following:

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