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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: : CASE NO. 06-71019-JB  
: :  
BENJAMIN KELLY, : CHAPTER 13  
: :  
Debtor. : :

**ORDER**

This matter is before the Court on a motion filed by the debtor *pro se* on November 8, 2006, in which he seeks to re-open the case. The case was dismissed on October 27, 2006 for failure to pay the filing fee. After careful consideration of the record, the Court concludes that the motion to re-open cannot be granted.

Debtor Benjamin Kelly filed a voluntary petition for relief under Chapter 13 on September 5, 2006. On September 5, 2006, debtor also filed an application to pay the Chapter 13 filing fee in installments and paid the first installment of seventy-five dollar (\$75.00). The Court issued an Order granting debtor's application and ordering debtor to pay the remaining portion of the filing fee in installments with \$99.50 due on October 5, 2006 and \$99.50 due on November 6, 2006 (Docket No. 3). Debtor failed to pay the installment due on October 5, 2006 and the Clerk's office sent a deficiency notice on October 11, 2006 notifying debtor that the installment was not paid, instructing him to pay the installment within ten days, and notifying

him that the case would be dismissed if the installment was not paid (Docket No. 12). On October 27, 2006, the case was dismissed for failure to pay the filing fee (Docket No. 19).

Federal Rule of Bankruptcy Procedure 1006 requires a debtor to pay a filing fee and permits that fee to be paid in installments. If an installment of the filing fee is not paid, Rule 1017(b) allows the court to dismiss the debtor's case. In the present case, debtor did not pay his filing fee, was notified of the delinquency and consequences of his failure to pay, and still has not paid the remaining installments on his filing fee. If debtor's failure to pay the filing fee were the only problem in this case, debtor might be permitted to re-open the case and pay the filing fee. However, there are at least two additional problems with debtor's case that make re-opening the case futile.

First, when debtor filed his petition on September 5, 2006, he failed to file a certification under 11 U.S.C. § 109(h)(1) that he had received a credit counseling briefing from an approved nonprofit budget and credit counseling agency during the 180 day period before filing. Instead, he completed a form, checking a box as follows:

I have not received the budget and credit counseling briefing required by 11 U.S.C. §109(h), but I have attached an explanation (certification) of the exigent circumstances and listed the name of the approved nonprofit budget and credit counseling agency from which I requested counseling services and the date I requested them. If these circumstances are satisfactory to the Court, I qualify for a 30 day waiver under §109(h)(3), and I will obtain the required counseling services during this 30 day period, or my case may be dismissed. (Docket No. 5) (emphasis added).

Although the box checked on the form calls for an attachment of a certification that both explains the exigent circumstances and lists the name of the approved agency from which

counseling was requested before filing bankruptcy, Debtor simply attached a statement that he had to file a “last minute bankruptcy” due to a hardship.

The Bankruptcy Abuse Prevention And Consumer Protection Act of 2005 (“BAPCPA”) requires that individual debtors receive a credit counseling briefing from an approved budget and credit counseling service before a bankruptcy case is filed. 11 U.S.C. §109(h)(1) (2006); *In re Dixon*, 338 B.R. 383 (B.A.P. 8<sup>th</sup> Cir. 2006); *In re Talib*, 335 B.R. 417 (Bankr. W.D. Mo. 2005); *In re DiPinto*, 336 B.R. 693 (Bankr. E.D. Pa. 2006). Pursuant to § 109(h)(3), a debtor may obtain a 30-day waiver of the credit counseling briefing requirement if the debtor submits a certification that (1) describes exigent circumstances that merit a waiver of the credit counseling briefing requirement; (2) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services during the five day period beginning on the date on which the debtor made the request; and (3) is satisfactory to the Court. All three of these elements must be present in order for the debtor to be eligible for filing a bankruptcy case. *Talib*, 335 B.R. at 420-21 (“Because the requirements are stated in the conjunctive, each of the three requirements must be satisfied for the debtor to qualify for the described exemption”) (citations omitted); *DiPinto*, 336 B.R. at 696 .

Debtor has not filed the required budget and credit counseling certificate from an approved agency. Nor did debtor provide an explanation of the exigent circumstances which caused him to file his case before obtaining the required credit counseling briefing. Nor did debtor show that he tried to obtain the credit counseling briefing before he filed this case, but was unable to obtain it during the 5-day period beginning on the date he made his request. Thus, the exception under § 109(h)(3) does not apply in this case.

Even if the § 109(h)(3) exemption applied in this case, the exemption ceases to apply to the individual after thirty (30) days from the filing, and the individual must complete budget and credit counseling in order to be a debtor in a case under the Bankruptcy Code. Debtor did not complete the budget and credit counseling within thirty (30) days of requesting a waiver under § 109(h)(3). Even if debtor qualified for an exemption under § 109(h)(3), the exemption expired and debtor failed to file the required budget and credit counseling certificate from an approved agency.

Second, the debtor's failure to file certain documents is an additional reason for dismissal of the case. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") substantially amended Section 521 of the Bankruptcy Code. Section 521(a)(1) requires a debtor to file a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs. Federal Rule of Bankruptcy Procedure 1007 requires this information to be filed within 15 days of the filing of the bankruptcy petition. Fed. R. Bankr. P. 1007. Under BAPCPA, if an individual debtor does not file the information required under § 521(a)(1) within 45 days after the date of filing of the petition, the law provides that the case is automatically dismissed effective on the 46th day after the date of the filing of the petition. 11 U.S.C. § 521(i) (2006). Here, the petition was filed on September 5, 2006 and 45 days after filing would be October 20, 2006. The docket does not reflect the debtor having filed any schedules or statement of financial affairs.

The Bankruptcy Code does not permit an individual to continue to be a debtor in a bankruptcy case if that individual does not meet the requirements and fulfill the responsibilities of a debtor. Debtor has not paid the installments of his filing fee, filed the required schedules

and statement of financial affairs, or submitted certification of completion of budget and credit counseling. In accordance with the reasoning above, debtor's motion to re-open the case is DENIED, and debtor's case is dismissed without prejudice. If debtor chooses to file another case, he may want to consider consulting an attorney to assist him in filing the necessary documents and meeting the required deadlines.

IT IS SO ORDERED, this 27<sup>th</sup> day of November, 2006.

  
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JOYCE BIARY  
UNITED STATES BANKRUPTCY JUDGE

**DISTRIBUTION LIST**

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