

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: : CASE NO. 11-55668-JB  
: :  
TINA MARIE SANDERS, : :  
: :  
Debtor. : CHAPTER 13

ORDER AND NOTICE OF HEARING

Debtor filed a *pro se* motion to reconsider the Court's June 16, 2011 Order dismissing this Chapter 13 case. Debtor did not appear at the June 7, 2011 hearing on the Chapter 13 Trustee's motion to dismiss and objections to confirmation, and debtor did not attend the meeting of creditors. Debtor is strongly urged to obtain bankruptcy counsel, as there are at least three (3) problems which debtor should be aware of and prepared to address at a hearing on debtor's motion to reconsider. The hearing shall be on **August 16, 2011, at 10:00 A.M., in COURTROOM 1402, UNITED STATES COURTHOUSE, RICHARD B. RUSSELL FEDERAL BUILDING, 75 SPRING STREET, S.W., ATLANTA, GEORGIA.**

The three (3) issues are as follows. First, debtor requests additional time to file Schedules, Statement of Financial Affairs, Statement of Current Monthly Income, Chapter 13 plan, and other papers, because she has had difficulty obtaining financial documents from her estranged husband. Section 521 of the Bankruptcy Code sets absolute deadlines for the filing of the required papers. Section 521(i)(1) provides that if an individual Chapter 13 debtor fails to file the papers required under § 521(a)(1) within forty-five (45) days after the filing of the petition, the case shall be automatically dismissed effective on the forty-sixth (46<sup>th</sup>) day after the date of the filing of the petition.

Furthermore, § 521(i)(3) provides that, upon request of the debtor made within forty-five (45) days after the date of the filing of the petition, the Court in its discretion may allow an additional period not to exceed forty-five (45) days to file the required information. Therefore, these subsections read in conjunction set an absolute deadline of ninety (90) days for the debtor to file the papers required by § 521(a)(1). Here, debtor requested, and the Court granted, an extension to file these documents, but debtor did not file any of the required documents by the extended deadline. The ninety-day deadline has passed, and the law would appear to preclude the Court from granting any further extension for debtor to file these required papers.

Second, it is unclear to what extent the automatic stay would be in effect if this case were reopened. Section 362(c)(3)(A) of the Bankruptcy Code provides that if a Chapter 13 debtor was a debtor in a pending case within the preceding one-year period and that case was dismissed, then, with certain exceptions applicable only when the previous case was a Chapter 7 case, the automatic stay shall terminate with respect to the debtor on the thirtieth (30<sup>th</sup>) day after the filing of the later case. Debtor's current case was filed on February 25, 2011. She was a debtor in a *pro se* Chapter 13 case that was pending within the one-year period preceding February 25, 2011, Case No. 10-89227-JB. Debtor filed that case on October 1, 2010, and it was dismissed on December 29, 2010. Accordingly, pursuant to § 362(c)(3)(A), the automatic stay in debtor's current case terminated thirty (30) days after the case was filed.<sup>1</sup>

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<sup>1</sup> Section 362(c)(3)(B) provides that a party in interest may file a motion for the continuation of the automatic stay and, upon notice and a hearing completed before the expiration of the thirty-day period, the court may extend the stay in particular cases as to any or all creditors only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. No such motion was filed in this case.

Third, debtor would not be eligible for a Chapter 13 discharge in this case. Under § 1328(f)(1) of the Bankruptcy Code, a Chapter 13 debtor is not eligible for a Chapter 13 discharge if such debtor received a discharge in a case filed under Chapter 7, 11, or 12 during the four-year period preceding the date of the order for relief in the Chapter 13 case. On October 6, 2008, debtor filed a Chapter 7 case through counsel, in which she received a Chapter 7 discharge. Accordingly, pursuant to § 1328(f)(1), debtor is not eligible for a Chapter 13 discharge in any voluntary case filed prior to October 6, 2012. The instant case was filed on February 25, 2011 and, therefore, debtor is not eligible for a Chapter 13 discharge in this case.

Given the expiration of the deadline for debtor to file papers required in a Chapter 13 case, the statutory automatic dismissal when papers are not filed, and the likelihood that debtor would not benefit from an automatic stay or a Chapter 13 discharge given her previous bankruptcy filings, it is unclear what debtor seeks to do or can accomplish legally in her motion to reconsider the Order dismissing this case. However, the Court will hear any pertinent legal arguments in support of debtor's motion to reconsider the Order of dismissal at the August 16, 2011 hearing.

The Clerk is directed to serve a copy of this Order and Notice of Hearing upon debtor, the Chapter 13 Trustee, the U.S. Trustee, and all creditors and other parties in interest.

IT IS SO ORDERED, this 2<sup>nd</sup> day of July, 2011.

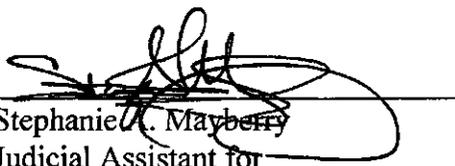
  
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JOYCE BIHARY  
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

Tina Marie Sanders  
2540 Sable Ridge Court  
Buford, GA 30519

Mary Ida Townson  
Chapter 13 Trustee  
Suite 2700 Equitable Bldg.  
100 Peachtree Street, NW  
Atlanta, GA 30303

  
Stephanie A. Mayberry  
Judicial Assistant for  
Chief Judge Bihary

Mailed: 07/21/2011