



IT IS ORDERED as set forth below:

Date: May 11, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|---------------------------|---|----------------------|
| In re: | : | BANKRUPTCY CASE NO: |
| | : | |
| CAR'MI WILLIAMS, | : | 14-70375-MGD |
| | : | |
| Debtor. | : | |
| | : | |
| | : | |
| CAR'MI WILLIAMS, | : | |
| | : | |
| | : | ADVERSARY PROCEEDING |
| | : | NO. 15-5055 |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| U.S. DEPARTMENT OF | : | CHAPTER 7 |
| EDUCATION/NELNET | : | |
| | : | |
| Defendant. | : | JUDGE DIEHL |
| | : | |

ORDER DENYING MOTION OF THE UNITED STATES TO DISMISS

Before the Court is the Motion to Dismiss filed on March 25, 2015 by the United States of America on behalf of the Department of Education based on Rule 7004(b) of the Federal Rules of

Bankruptcy Procedure (Docket No. 4). Plaintiff, who is *pro se*, filed a response to the Motion to Dismiss on April 27, 2015 (Docket No. 8). For the reason set forth below, Defendant's Motion to Dismiss will be denied without prejudice.

On January 20, 2015, Plaintiff filed an adversary complaint under 11 U.S.C. § 523(a)(8) (Docket No. 1), and the Clerk's Office issued a summons against the U.S. Department of Education/Nelnet (Docket No. 2). The Certificate of Service filed by Plaintiff indicates that she mailed the summons and complaint to Nelnet's Legal Department in Aurora, Colorado on January 20, 2015 (Docket No. 3).

The United States moved to dismiss the complaint for insufficiency of service because Plaintiff failed to serve the United States Attorney for the Northern District of Georgia and the Attorney General of the United States as required by F.R.B.P. 7004(b)(4). Because the Department of Education is an agency of the United States, service is governed by F.R.B.P. 7004(b)(4) and 7004(b)(5), which require mailing a summons and complaint to the civil process clerk at the office of the United States attorney for the district in which the action is brought, to the Attorney General of the United States in Washington, D.C., and to the affected officer or agency. In this case, process was not served on any of these three entities. Therefore, service of process was insufficient.

The Court has discretion, however, to decide whether to dismiss the case or to allow Plaintiff to perfect service. Israel v. Direct Loans (In re Israel), 2008 WL 7874795 (Bankr. N.D. Ga. June 13, 2008); see also Umbenhauer v. Woog, 969 F.2d 25, 30 (3d Cir. 1992) (Dismissing a complaint based on insufficient service inappropriate when plaintiff is likely to make proper service subsequently). Given a reasonable prospect that Plaintiff will ultimately be able to serve process properly on Defendant, in view of same, it is

ORDERED that the Motion of the United States to Dismiss this adversary proceeding be, and the same hereby is, **DENIED** without prejudice, provided, however, that in the event Plaintiff fails to obtain an alias summons and serve same along with a copy of her complaint upon the parties as described herein within **30 days** of entry of this Order, which shall be set forth in a certificate of service to be filed by Plaintiff, Defendant's Motion may be granted and this adversary proceeding dismissed without further notice.

The Clerk is directed to serve a copy of this Order upon Plaintiff-Debtor, Counsel for the United States, Defendant Nelnet at the address previously served by Plaintiff, the Chapter 7 Trustee, and the United States Trustee.

END OF DOCUMENT