

ENTERED ON DOCKET
10-28-08

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
HAROLD J. FARRIS,)	CASE NO. 04-95802-MHM
)	
Debtor.)	

ORDER DENYING DEBTOR'S MOTION TO RESET HEARING

Upon due and proper notice served September 13, 2008, hearing was held October 7, 2008, on the motion of the Chapter 7 Trustee and the motion of the United States Trustee to dismiss this case. Debtor did not appear at that hearing. A dismissal order was entered October 14, 2008. On October 8, 2008, however, Debtor had filed a motion to reschedule the October 7, 2008 hearing. On October 21, 2008, Debtor filed a renewed motion to reset the hearing (collectively, the "Motions").

In the Motions, Debtor alleged that he had not received notice of the hearing, and attached to his first motion a copy of an envelope that appears to be addressed to First Family Financial, 4362 Peachtree Road, Atlanta, GA. The relevance of that envelope is unclear. Debtor does not allege his address of record has changed or that he has had any problem receiving mail properly addressed to his address of record, which is 1577 South Gordon Street, Atlanta, Georgia 30310-2358. The certificate of service of the notice of hearing shows that it was served upon Debtor at his address of record September 13, 2008.


"The common law has long recognized a rebuttable presumption that an item properly mailed was received by the addressee." *Konst v. Florida East Coast Railway Co.*, 71 F. 3d 850 (11th Cir. 1996). *See also Nikwei v. Ross School of Aviation, Inc.*, 822 F. 2d 939 (10th Cir. 1987); *Bak v. Vincze*, 230 F. 3d 297 (7th Cir. 2000) (per curiam). The presumption of proper notice cannot be rebutted solely by allegations of non-receipt. *Moody v. Bucknum*, 951 F.2d 204 (9th Cir. 1991); *In re Walker*, 161 B.R. 911 (Bankr. D. N.J. 1994). Debtor has failed to allege any facts to rebut the presumption that he received proper and timely notice of the October 7, 2008 hearing. A failure or refusal to collect his properly addressed and delivered first class mail does not establish lack of notice.

Accordingly, it is hereby

ORDERED that Debtor's motion to reset hearing is DENIED.

The Clerk is directed to serve a copy of this order upon Debtor and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 27th day of October, 2008.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE