

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A06-60874-PWB
	:	
MARK HENDERSON KAVANAUGH,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE

**ORDER ON CREDITORS' MOTION FOR AUTOMATIC DISMISSAL PURSUANT
TO 11 U.S.C. § 521(i)(2)**

On March 21, 2006, creditors Charlene Handler, Henry Handler, Margaret M. McLaughlin, Paul Handler, Nancy Handler & Vincent Amodeo (the "Creditors") filed a request that the Court enter an order dismissing this case pursuant to 11 U.S.C. § 521(i). Specifically, the Creditors contend that this case is subject to dismissal under § 521(i) because the Debtor has failed to file the "Statement of Monthly Income and Means Test Calculation," more commonly known as Official Form B22A. For the reasons stated herein, the Debtor's case is not automatically dismissed, pending a hearing on whether the Debtor has complied with the requirements of 11 U.S.C. § 521(a)(1).

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") imposes new requirements upon debtors, including the filing of certain documents in each case. Section 521(a) provides that the debtor shall

- (1) file -
 - (A) a list of creditors; and
 - (B) unless the court orders otherwise -
 - (i) a schedule of assets and liabilities;
 - (ii) a schedule of current income and current expenditures;
 - (iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate -
 - (I) of an attorney whose name is indicated on the petition as the attorney for the debtor or a bankruptcy petition preparer signing the petition under section 110(b)(1) indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

- (II) if no attorney is so indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;
- (iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;
- (v) a statement of the amount of monthly net income, itemized to show how the amount is calculated;
- (vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition.

If a chapter 7 or 13 individual debtor fails to file the information required by § 521(a)(1) within 45 days of the filing of the petition, “the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.” 11 U.S.C. § 521(i)(1). If a case is subject to automatic dismissal under § 521(i)(1), a party in interest may request that the court enter an order dismissing the case and, if requested, the court must enter an order no later than five days after the request. 11 U.S.C. § 521(i)(2).

There is no dispute that the Debtor has filed the following information required by § 521(a)(1): a list of creditors on February 1, 2006 (§ 521(a)(1)(A)); a schedule of assets and liabilities on February 1, 2006 (§ 521(a)(1)(B)(i)); a schedule of current income (Schedule I) and current expenditures (Schedule J) on February 1, 2006 (§ 521(a)(1)(B)(ii)); a statement of financial affairs and § 342 notice signed by the debtor on February 1, 2006 (§ 521(a)(1)(B)(iii)); copies of pay advices and a separation notice on February 10, 2006 (§ 521(a)(1)(B)(iv)); and the statement of anticipated increase in income and expenses as reflected on Schedule I on February 1, 2006 (§ 521(a)(1)(B)(vi)).

The Creditors contend that the Debtor’s failure to file the “Statement of Monthly Income and Means Test Calculation” as set forth in Official Form B22A (“Form B22A”) necessitates that the case be automatically dismissed. The question, however, is whether Form B22A is one of the documents which falls within the list enumerated in § 521(a)(1). Although the Creditors do not cite a specific subsection of § 521(a)(1), Form B22A could arguably fall into two categories set forth

in § 521(a)(1): the schedule of current income and current expenditures (§ 521(a)(1)(B)(ii)) or the statement of the amount of monthly net income, itemized to show how the amount is calculated (§ 521(a)(1)(B)(v)).

However, even if Form B22A does fall within one of these categories, if the Debtor has filed information which nevertheless satisfies the requirements of § 521(a)(1)(B)(ii) and § 521(a)(1)(B)(v), it would be inappropriate to dismiss the Debtor's case under § 521(i). The Debtor's Schedule I and J also would appear to fit the requirements of these two subdivisions, inasmuch as they are schedules of the Debtor's current income and expenditures (§ 521(a)(1)(B)(ii)), and, they reflect the Debtor's monthly net income, itemized to show how the amount is calculated (§ 521(a)(1)(B)(v)). This, in fact, is the position taken in the Advisory Committee Notes regarding amendments to Official Form 6 (the debtor's schedules) which provides with respect to schedule I that "[a] new subtotal line for income from sources other than as an employee and a new 'total monthly income' line provides for this form to be used in conjunction with Schedule J to satisfy the requirements of § 521(a)(1)(B)(v)" and, with respect to Schedule J, that the form "is amended to provide, in conjunction with Schedule I, a statement of monthly net income, itemized to show how the amount is calculated, as required by § 521(a)(1)(B)(v), which was added to the Code in 2005." Moreover, dismissal based on a failure to file a form which requires disclosure of income seems counterintuitive where a debtor has *no income* as the Debtor in this case has indicated in his schedules.¹

Because this is a matter of first impression, the Court deems it appropriate to schedule a hearing to determine whether the Debtor's failure to file Form B22A within 45 days of filing his

¹If a party in interest disputes the accuracy or veracity of the Debtor's disclosures, other remedies exist. See 11 U.S.C. §§ 707 and 727(a).

bankruptcy petition renders his case "automatically dismissed" pursuant to § 521(i) or whether the Debtor has otherwise complied with the filing requirements of § 521(a)(1). Pending the hearing, as set forth below, this case is not automatically dismissed. It is

ORDERED that the Court shall hold a hearing on the sufficiency of Debtor's compliance with the filing requirements of § 521(a)(1) and whether the Debtor's case should be dismissed pursuant to 11 U.S.C. § 521(i) on April 11, 2006, at 11:00 a.m., in Courtroom 1401, U.S. Courthouse, 75 Spring St., S.W., Atlanta, Georgia. Pending such hearing, the Debtor's case is not automatically dismissed pursuant to § 521(i).

The Clerk is directed to serve copies of this Order on the Debtor, parties in interest, the Chapter 7 Trustee, and the United States Trustee.

At Atlanta, Georgia, this 24 day of March, 2006.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE