



IT IS ORDERED as set forth below:

Date: April 29, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

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

| | | |
|---------------------------|---|----------------------------|
| IN THE MATTER OF: | : | CASE NUMBER: A08-79017-PWB |
| | : | |
| GREGORY ALEXANDER FOWLER | : | |
| and ANN JEANNETTE FOWLER, | : | |
| | : | IN PROCEEDINGS UNDER |
| | : | CHAPTER 7 OF THE |
| Debtors. | : | BANKRUPTCY CODE |
| | : | |
| | : | |
| DONALD F. WALTON, | : | |
| UNITED STATES TRUSTEE | : | |
| FOR REGION 21, | : | |
| | : | |
| Plaintiff | : | ADVERSARY PROCEEDING |
| | : | NO. 08-6687 |
| v. | : | |
| | : | |
| ANN JEANNETTE FOWLER, | : | |
| | : | |
| Defendant. | : | |

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DENYING
DISCHARGE OF ANN JEANNETTE FOWLER**

The United States Trustee seeks denial of the Debtor's discharge pursuant to 11 U.S.C.

§ 727(a)(8) on the basis that the chapter 7 discharge received by the Debtor, Ann Jeanette Fowler, in a prior case renders her ineligible for discharge in this case. Ms. Fowler has filed an answer contending that she is entitled to a discharge, but has not responded to the Plaintiff's motion for summary judgment.¹

The facts are not disputed. The Debtors filed a joint petition for relief under chapter 7 of the Bankruptcy Code on September 27, 2008. Ms. Fowler filed a previous case, that being 01-84394-MHM, on July 31, 2001. Although the case was commenced under chapter 13, Ms. Fowler converted the case to chapter 7 on June 11, 2003, and she received a chapter 7 discharge on November 2, 2003.

Ms. Fowler contends that she is entitled to a discharge as a matter of law (Answer at 1, Doc. No. 4):

Debtor is eligible to and should receive a discharge in this pending Case pursuant to 11 U.S.C. 348(a) of the United States Bankruptcy Code. Under 11 U.S.C. Section 348(a), for purposes of commencement of debtor's case, and for purposes of Section 727(a)(8), the date of filing original Chapter 13 Petition controls, rather than the date of conversion to Chapter 7. Debtor's previous case was filed under Chapter 13 on July 31, 2001, which is approximately seven years and two months before the case now pending before this Court was filed.

Ms. Fowler takes the position that because she filed the prior case under a chapter 13, § 727(a)(8) is inapplicable. However, this argument ignores the plain language of both § 727(a)(8) and § 348(a). Section 727(a)(8) provides that the court shall grant the debtor a discharge unless

¹This Court has authority to hear and determine this proceeding under 28 U.S.C. § 157(b)(1) as a core proceeding under 28 U.S.C. § 157(b)(2)(J) within the District Court's jurisdiction under 28 U.S.C. § 1334(b) that the District Court has referred under 28 U.S.C. § 157(a) and L.R. 83.7, NDGa.

“the debtor has been granted a discharge under [§ 727(a)] . . . in a case commenced within 8 years before the date of the filing of the petition.” Section 727(a)(8) does not require that the prior case be commenced under chapter 7; it only requires that the debtor has been granted a discharge under chapter 7 in a case commenced within the previous 8 years.²

Section 348(a) does not lead to a different result. Section 348(a) provides that “[c]onversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, . . . does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.” Courts have construed this section to mean that a case that has been converted to chapter 7 from chapter 13 relates back to initial filing date for purposes of discharge. *E.g., In re Sours*, 350 B.R. 261 (Bankr. E.D. Va. 2006); *In re Capers*, 347 B.R. 169 (Bankr. D.S.C. 2006). The Debtor has offered no contrary authority to require a different result.

The uncontroverted record reflects that Ms. Fowler received a chapter 7 discharge in a case commenced within eight years before the filing of this bankruptcy petition. Accordingly, Ms. Fowler is not entitled to a discharge in this case. It is

ORDERED that the United States Trustee’s motion for summary judgment is granted; and it is

FURTHER ORDERED that the discharge of Ann Jeanette Fowler is denied pursuant to

²The comparable provisions under chapter 13 are phrased differently. *Cf.* 11 U.S.C. § 1328(f) (emphasis added) (“Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge (1) in a case *filed under* chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter; or (2) in a case *filed under* chapter 13 of this title during the 2-year period preceding the date of such order.”).

11 U.S.C. § 727(a)(8).

The Clerk is directed to give notice of the denial of the Debtor's discharge to all parties in interest.

End of Order

Distribution List

Martin P. Ochs
Office of the U. S. Trustee
362 Richard Russell Federal Bldg.
75 Spring Street, SW
Atlanta, GA 30303

Howard Jay Kent
Ames & Kent, LLC
1401 Peachtree Street
Suite 500
Atlanta, GA 30309

Ann Jeannette Fowler
1389 Fall River Drive
Conyers, GA 30013