



IT IS ORDERED as set forth below:

Date: March 25, 2009

A handwritten signature in black ink, reading "Paul W. Bonapfel", is written over a horizontal line.

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

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

IN THE MATTER OF:	:	CASE NUMBER: A09-63120-PWB
	:	
SOPHIA J. TAYLOR,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

ORDER AND NOTICE

On March 21, 2009, Ovation Condominium Association, Inc. (the "Movant") filed a request that the Court enter an order dismissing this case pursuant to 11 U.S.C. § 521(i)(2). Specifically, the Movant contends that this case is subject to dismissal under § 521(i) because the Debtor has failed to file all payment advices or evidence of payment required by the statute. The Movant also notes that the Chapter 13 Trustee has also filed an objection to confirmation on this basis as well. 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)(B)(iv).

Section 521(a)(1)(B) provides that the debtor shall file 6 categories of documents, including “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.” § 521(a)(1)(B)(iv). If a chapter 7 or 13 individual debtor fails to file all the information required under § 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 filing of the case. Any party in interest may request the court to enter an order dismissing the case. § 521(i)(2).

With respect to the pay advice requirement, two exceptions to “automatic dismissal” may exist: (1) the court may exercise its ability to “order[] otherwise” and excuse the filing of pay advices (§ 521(a)(1)(B)); and (2) upon motion of the trustee, the court may decline to dismiss the case if the court determines that the debtor attempted in good faith to file all the pay advices and that administration of the case would serve the best interests of the creditors. (§ 521(i)(4)).

The Debtor’s schedules reflect that the Debtor is self-employed. This begs the question of whether the Debtor has failed to comply with § 521’s pay advice filing requirement since § 521 contemplates that a debtor produce pay advices or evidence of payment received by the debtor “*from any employer of the debtor.*” To the extent that the Debtor received payment from an employer (other than herself) in the 60 days preceding the petition, the pay advice requirement is relevant and applicable. To the extent that the Debtor was exclusively self-employed for the 60 days preceding the bankruptcy filing, the pay advice requirement would appear to be inapplicable.¹

¹The Court makes two observations regarding accuracy and disclosure. Nowhere in the Movant’s motion is there a statement that the Debtor’s schedules reflect that she is self-employed. In the interest of full disclosure to the Court, such a statement would be appropriate. Similarly, full disclosure is appropriate in the Chapter 13 Trustee’s objection to confirmation. The objection that “Debtor has not filed copies of all payment advices or other evidence of payments received within

The Court has the discretion to determine whether information is “required” under § 521(a)(1), even when such inquiry occurs after the 45 day deadline. *In re Acosta-Rivera*, – F.3d–, 2009 WL 400394 (1st Cir. Feb. 19, 2009); *In re Parker*, 351 B.R. 790 (Bankr. N.D. Ga. 2006). Accordingly, the Court shall schedule a hearing to determine whether it is necessary for the Debtor to file “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” or whether, to the extent the Debtor was exclusively self-employed during this time period, the Court may “order otherwise” and excuse this filing requirement.² 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)(B)(iv) (the pay advice requirement) and whether the Debtor’s case should be dismissed pursuant to 11 U.S.C. § 521(i) on **April 8, 2009**, 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).

End of Order

sixty (60) days before the date of the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv) and Rule 1007(b)(1)(E) F.R. Bankr.P.” is not an accurate statement of the law since it omits reference to the “received . . . by the debtor from any employer of the debtor” requirement.

²The Movant has not alleged that the Debtor failed to file any other documents required by § 521(a).

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