

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 03-99076-JB
	:	
NADER KAZEM,	:	CHAPTER 7
	:	
Debtor.	:	
	:	

ORDER

This Chapter 7 case is before the Court on a motion filed by Mike H. Samadi *pro se* to reconsider the Court's January 13, 2005 Order denying his motion to reopen debtor's Chapter 7 case to proceed with his motion to revoke the debtor's discharge. Debtor did not file any response to the motion to reconsider. After carefully considering the motion and the record in this case, the Court concludes that the motion should be granted

In the January 13, 2005 Order, the Court denied Mr. Samadi's motion to reopen on the grounds that Mr. Samadi had missed the deadline to file a request to revoke debtor's discharge pursuant to 11 U.S.C. § 727(e)(1). Section 727(e)(1) gives creditors one (1) year after the discharge is granted to file a request that debtor's discharge be revoked under § 727(d)(1). Debtor's discharge was granted on December 30, 2003, and thus, the statutory deadline for Mr. Samadi to request a revocation of debtor's discharge was December 30, 2004. Mr. Samadi's Motion to Revoke the Discharge was filed stamped January 3, 2005 at 7:56 A.M.

In his motion to reconsider, Mr. Samadi states that he delivered the Motion to Revoke the Discharge to the Clerk's office and the United States Trustee's office on December 30, 2004, after the Clerk's office had closed, by placing a copy of it under the Clerk's office door and under the United States Trustee's office door. Courts have the authority to deem a pleading filed at the time it is placed in the custody of a proper officer. *See* Fed. R. Bankr. P. 5001 (a)(2005); *In re Bryan*, 261 B.R. 240 (9th Cir. B.A.P. 2001); 9 COLLIER ON BANKRUPTCY ¶ 5001.01 (15th rev. ed. 2005); *see also Rogers ex rel*

Jones v. Bowen, 790 F.2d 1550, 1552 (11th Cir. 1986). The Clerk's office was closed on Friday, December 30, 2004, at 4:00 P.M., and did not reopen until Monday, January 3, 2005 at 8:00 A.M. Based on Mr. Samadi's representations that he placed a copy of the Motion to Revoke the Discharge under the doors of the Clerk's office and the United States Trustee's office on Thursday, December 30, 2004, the fact that the motion was file stamped prior to the Clerk's office opening on January 3, 2005, and the fact that debtor has presented no contrary evidence, the Court finds that Mr. Samadi did hand deliver a copy of his motion to the Clerk's office on December 30, 2004. Thus, the Court finds that the request to revoke the discharge was in the constructive possession of the Clerk on December 30, 2004, and was therefore filed within the one year as required in § 727(e)(1) of the Bankruptcy Code.

In the Court's January 13, 2005 Order, the Court also noted that a request to revoke debtor's discharge should be filed in the form of a complaint. This is because Fed. R. Bankr. P. 7001(4) includes a proceeding to revoke a discharge as an adversary proceeding, and an adversary proceeding is commenced by the filing of a complaint. *See* Fed. R. Civ. P. 3 (2005); Fed. R. Bankr. P. 7003 (2005). If a deficient pleading substantially complies with the requirements of a complaint by containing sufficient information to put the debtor on notice of the nature of the adverse party's claim, courts may construe the otherwise deficient pleading as a complaint. *Dominguez v. Miller (In re Dominguez)*, 51 F.3d 1502, 1508 (9th Cir. 1995); *In re Little*, 220 B.R. 13, 17 (Bankr. D.N.J. 1998). The Motion to Revoke Discharge delivered to the Clerk's office on December 30, 2004 substantially complies with the requirements of a complaint, and the Court will construe it as such and direct the Clerk to assign it an adversary proceeding number. Mr. Samadi must obtain a summons from the Clerk's office and must properly serve the debtor and debtor's attorney with a copy of the summons and the complaint. *See* Fed. R. Bankr. P. 7004(a) and 7004(b)(9) (2005). Pursuant to Fed. R. Civ. P. 4(m), as incorporated by Fed. R. Bankr. P. 7004(a), Mr. Samadi has one hundred twenty (120) days from the filing of the

complaint to effectuate proper service. Thus, if Mr. Samadi fails to properly serve debtor and debtor's attorney with the complaint and summons or if he fails to file a certificate of service indicating that service has been properly effectuated by **April 29, 2005**, the complaint will be dismissed.

In accordance with the above reasoning, the motion to reconsider is hereby GRANTED. The January 13, 2005 Order is hereby VACATED, and Mr. Samadi's motion to reopen debtor's bankruptcy case is hereby GRANTED. The Clerk is directed to reopen this Chapter 7 case and treat the Motion filed as docket entry No. 7 as a complaint initiating an adversary proceeding filed on December 30, 2004.

IT IS SO ORDERED, this 25th day of March, 2005.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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Date: March 25, 2005