

MAR 08 2011UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	:	CASE NO. 09-84032-JB
	:	
MAXX REDWINE,	:	
	:	CHAPTER 13
Debtor.	:	

ORDER

This Chapter 13 case came before the Court on March 1, 2011 for a hearing on debtor's counsel's motion for a hardship discharge pursuant to 11 U.S.C. § 1328(b) because debtor, Maxx RedWine, passed away on January 31, 2011 (Doc. No. 66). Soo Hong appeared for the debtor and Sonya Buckley appeared for the Chapter 13 Trustee. No creditors appeared and no objections to the motion were filed. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). After careful consideration of the facts and applicable law, the Court concludes that the motion should be granted.

This case involves a single debtor with a confirmed Chapter 13 plan. Mr. RedWine originally filed a joint petition with his wife for Chapter 13 relief, and the debtors' Chapter 13 plan was confirmed on November 10, 2009. The couple divorced, debtor's wife was severed from this Chapter 13 case, and debtor filed an amended plan that was approved by the Court on August 24, 2010. Counsel for debtor filed a suggestion of death showing that debtor passed away on January 31, 2011.

Counsel requests that instead of dismissing the case, the Court grant debtor

a hardship discharge pursuant to 11 U.S.C. § 1328(b). A hardship discharge is a recognized solution for administering a Chapter 13 case in which the debtor has died prior to completing payments under a confirmed plan. *See, e.g.*, 9 COLLIER ON BANKRUPTCY ¶ 1016.04 (Alan N. Resnick & Henry J. Sommer eds, 16th ed.); Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY, 4TH EDITION, § 269.1, at ¶ 2, Sec. Rev. June 9, 2004, [www.Ch13online.com](http://www.Ch13online.com); *see also In re Graham*, 63 B.R. 95, 96 (Bankr. E.D. Pa. 1986); *In re Bevelot*, 2007 WL 4192926, at \*2 (Bankr. S.D. Ill. Nov. 21, 2007); *In re Sales*, 2006 WL 2668465, at \*2 (Bankr. N.D. Ohio Sept. 15, 2006).

Federal Rule of Bankruptcy Procedure 1016 governs the administration of a case upon the death or incompetency of the debtor. Rule 1016 provides two options for the resolution of a Chapter 13 case, the first being dismissal. The second option allows for "further administration" of the case in the same manner "as though the death or incompetency had not occurred," provided further administration "is possible and in the best interest of the parties." Further administration may only be possible if a plan has been confirmed. *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999). If a plan has been confirmed, Rule 1016 provides for the possibility of a hardship discharge because if the debtor's death had not occurred, the case could have proceeded to two possible ends: (1) the debtor could have made the required plan payments, or (2) the debtor could have moved for a hardship discharge under § 1328(b). *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984). Thus, when a debtor dies after a Chapter 13 plan has been confirmed but before plan payments have been completed, a hardship discharge is permissible under Rule 1016 if it

is in the best interest of the parties.

The granting of a hardship discharge is an appropriate resolution for this case. Section 1328(b) authorizes a court to grant a hardship discharge to a debtor who has confirmed a plan but not completed payments if: (1) "the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable", (2) the value, as of the effective date of the plan, of the property actually disbursed under the plan to unsecured creditors is not less than the amount that unsecured creditors would receive in a Chapter 7 liquidation, and (3) modification of the plan under § 1329 is not practicable. All three requirements are met in this case.

Accordingly, debtor's motion for entry of a hardship discharge pursuant to 11 U.S.C. § 1328(b) is GRANTED, and the requirements under 11 U.S.C. § 1328(g)(1) for completing an instructional course concerning personal financial management are waived.

The Clerk is directed to serve a copy of this Order upon the parties in the distribution list and all creditors.

IT IS SO ORDERED, this 7<sup>th</sup> day of March, 2011.

  
JOYCE BIHARY  
UNITED STATES BANKRUPTCY JUDGE

Distribution List:

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