



**IT IS ORDERED as set forth below:**

**Date: October 21, 2014**

A handwritten signature in black ink, appearing to read "W. Homer Drake", is written over a horizontal line.

**W. Homer Drake  
U.S. Bankruptcy Court Judge**

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

|                            |   |                      |
|----------------------------|---|----------------------|
| <b>IN THE MATTER OF:</b>   | : | <b>CASE NUMBER</b>   |
|                            | : |                      |
| BARBARA DOREAN TIMBERLAKE, | : | BANKRUPTCY CASE      |
|                            | : | NO. 14-12177-WHD     |
| Debtor.                    | : |                      |
|                            | : |                      |
|                            | : |                      |
|                            | : |                      |
|                            | : | IN PROCEEDINGS UNDER |
|                            | : | CHAPTER 13 OF THE    |
|                            | : | BANKRUPTCY CODE      |

**ORDER**

On October 16, 2014, the Court heard Debtor's Motion to Dismiss and Expunge the bankruptcy case of Barbara Dorean Timberlake (hereinafter the "Debtor"). The facts of the case are relatively simple.

Prior to the filing of the case, the Debtor approached the law offices of Robert J. Semrad & Associates, LLC (hereinafter the "Firm") for a bankruptcy consultation. The

Firm advised the Debtor to file bankruptcy under Chapter 13 of the Code,<sup>1</sup> she agreed, and a petition was prepared. The Firm and the Debtor both understood that the petition would not be filed until the Debtor completed the credit counseling course required by 11 U.S.C. § 109(h). Due to a mix-up at the Firm, the Debtor's case was filed, in the place of another client's, prior to the Debtor's completion of the credit counseling course and without supplementary authorization.

The Debtor now seeks to have the case dismissed and the record expunged, presumably so that it does not affect her credit. Two bankruptcy judges in this district have addressed whether expungement of an unauthorized case is appropriate. See In re Harmon, 269 B.R. 758 (Bankr. N.D. Ga. 2010) (Diehl, B.J); In re Glover, 2009 WL 6498524 (Bankr. N.D. Ga. 2009) (Bonapfel, B.J). Both concluded that such cases were void *ab initio* and that the Court could not or should not take further action, such as expungement from the record. In re Harmon, 269 B.R. at 767 ("The Court now finds that Ms. Harmon's case was fraudulently filed without her express authorization and that the case was void *ab initio*. The Court does not need to take further action to compensate Ms. Harmon.");<sup>2</sup> In re Glover, 2009 WL 6498524, at \*2 ("Because the Court concludes that the bankruptcy filing on his behalf was not authorized, the Court will declare the filing to be void and of no effect. . . . The Court cannot, however, direct any credit reporting entity to change its records. The

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<sup>1</sup> 11 U.S.C. § 101 *et. seq.*

<sup>2</sup> Robert J. Semrad & Associates, LLC should be aware of this ruling, as it was their firm that made the unauthorized filing in In re Harmon.

Court cannot rewrite the history of what happened in the case or expunge the record.”) (citing In re Buppelmann, 269 B.R. 341 (Bankr.M.D.Pa.2001)).

The Court agrees with the reasoning of its colleagues. The case is void *ab initio*. Expungement is not the appropriate remedy. In acknowledgment of the Debtor’s presumed objective, the Court notes that any reporting agency is free to report that the bankruptcy petition was filed without Debtor’s authorization, as this Order shall reflect. See In re Glover, 2009 WL 6498524, at \*2. Accordingly, it is hereby

**ORDERED** that the Debtor’s request to expunge this case, Case Number 14-12177-WHD, is **DENIED**;

**IT IS FURTHER ORDERED** that this case, Case Number 14-12177-WHD, is hereby **DISMISSED** as having been initiated by a petition that was not authorized and, consequently, is **void ab initio**.

The Clerk is **DIRECTED** to serve a copy of this Order on the Debtor, the Debtor’s counsel, the Chapter 13 Trustee, the U.S. Trustee, and all creditors.

**END OF DOCUMENT**