

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

September 2, 2008 at 10:00 a.m.

1. 08-26000-A-13G EVELYN BENNETT HEARING - MOTION FOR
RDG #4 ORDER OF DISMISSAL
8-4-08 [33]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor failed to appear at the meeting of creditors on June 18 and July 23 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

2. 08-23101-A-13G LEWIS/MEARSHELLE BROWN HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
8-12-08 [29]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,634 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

3. 08-25902-A-13G JAMES DARROW HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [30]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on May 6. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation at a hearing on July 11. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

September 2, 2008 at 10:00 a.m.

4. 08-26403-A-13G STANLEY/OLIVIA EDWARDS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-12-08 [22]

Final Ruling: The trustee has voluntarily dismissed the motion. The case shall remain pending.

5. 08-26809-A-13G EMILIO/LEONIDA BRINGAS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-11-08 [35]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$6,640 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

6. 08-29413-A-13G JESSIE/EDUVIJES FLORES HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-12-08 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

A review of the proposed plan reveals that Countrywide holds a secured, long term claim that is provided for in Class 1 of the plan. There are pre-petition arrears on this claim that must be cured through the plan. The plan provides for this cure as well as the maintenance of post-petition contract installment payments by the trustee as permitted by 11 U.S.C. § 1322(b)(5).

General Order 05-03 provides at paragraph 3(a): *"The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."*

At paragraph 5(c)(2), the General Order provides: *"To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."*

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by Countrywide. This has delayed payment to this creditor to its prejudice. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

7. 08-29914-A-13G ROCELIE/DAVID RODGERS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-11-08 [16]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

A review of the proposed plan reveals that GMAC Mortgage holds a secured, long term claim that is provided for in Class 1 of the plan. There are pre-petition arrears on this claim that must be cured through the plan. The plan provides for this cure as well as the maintenance of post-petition contract installment payments by the trustee as permitted by 11 U.S.C. § 1322(b) (5).

General Order 05-03 provides at paragraph 3(a): *"The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c) (2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."*

At paragraph 5(c) (2), the General Order provides: *"To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."*

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by GMAC Mortgage. This has delayed payment to this creditor to its prejudice. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1).

8. 08-26831-A-13G VICTOR/ROSA NEAVEZ HEARING - MOTION FOR
RDG #3 ORDER OF DISMISSAL
8-12-08 [26]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$3,131.89 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1).

9. 08-25835-A-13G DONNIE/ANGELA HALE HEARING - MOTION
RDG #2 FOR ORDER OF DISMISSAL
8-1-08 [55]

Final Ruling: The trustee has voluntarily dismissed the motion. The case shall remain pending.

10. 08-29235-A-13G JOSEPH/JOSEPHINE NEMIE HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-28-08 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on July 9. Therefore, a proposed plan should have been filed no later than July 24. See Fed. R. Bankr. P. 3015(b). It was filed late on August 1. Because the plan was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a).

While the debtor has filed a plan on August 1, well after the due date had expired, the debtor has not served it together with a motion requesting its confirmation. The debtor has unnecessarily delayed confirmation of a plan to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

11. 08-29535-A-13G ERIKA SOLIS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-1-08 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. Other than the schedules, these documents were not filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Also, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This too is cause for dismissal.

12. 08-29237-A-13G ROSEMARY BROOKS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-30-08 [11]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot. The case was previously automatically dismissed.

required by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a).

In fact, the debtor has served the proposed plan together with a motion requesting its confirmation and set it for hearing on October 14. Therefore, the late filing of the plan will not unduly prejudice creditors.

16. 08-29249-A-13G KIMBERLY AICHINGER HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-11-08 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot. The case was previously automatically dismissed.

The petition was filed on July 9, 2008. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on July 14. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was August 23. The schedules and statements were not filed on or before the 45th day. Thus, on August 24 the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

17. 08-24252-A-13G TAMARA CARTER HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
8-12-08 [43]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$3,766 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

18. 08-28652-A-13G EUGENIA HERNANDEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-12-08 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to commence making plan payments and has not paid

approximately \$1,121.60 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).

19. 08-27053-A-13G LATY THONGPHET HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
8-12-08 [43]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$1,545 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

20. 08-29555-A-13G JAMES SEYMOUR HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-1-08 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on July 15. Therefore, a proposed plan should have been filed no later than July 30. See Fed. R. Bankr. P. 3015(b). It was filed late on July 31. Because the plan was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a).

While the debtor has filed a plan on July 31, after the due date had expired, the debtor has not served it together with a motion requesting its confirmation. The debtor has unnecessarily delayed confirmation of a plan to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

21. 08-30456-A-13G FREDDIE/JAIME BINGLEY HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-18-08 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on July 30. Therefore, a proposed plan should have been filed no later than August 14. See Fed. R. Bankr. P. 3015(b). It was filed late on August 25. Because the plan was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all

parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a).

While the debtor has filed a plan on August 25, well after the due date had expired, the debtor has not served it together with a motion requesting its confirmation. The debtor has unnecessarily delayed confirmation of a plan to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

22. 08-30057-A-13G JAMES ALLEN HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-11-08 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The documents were not filed by the deadline. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Also, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This too is cause for dismissal.

23. 08-21862-A-13G RANDY/LAURIE JAHODA HEARING - MOTION FOR
RDG #3 ORDER OF DISMISSAL
8-12-08 [53]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,836 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

24. 08-29365-A-13G JAMAEL DUDLEY HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-30-08 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot. The case was previously automatically dismissed.

The petition was filed on July 11, 2008. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on July 16. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was August 25. The schedules and statements were not filed on or before the 45th day. Thus, on August 26 the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

25. 08-30467-A-13G JONATHAN KISSEE HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-18-08 [7]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The documents were not filed by the deadline. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Also, the debtor failed to file a certificate to the petition together with a certificate demonstrating that she received credit counseling prior to filing the petition as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This too is cause for dismissal.

26. 08-27271-A-13G ROSEMARY LOVISA HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-12-08 [27]

Final Ruling: The trustee has voluntarily dismissed the motion. The case shall remain pending.

27. 08-28971-A-13G LORI MADRID HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on July 2. Therefore, a proposed plan should have been

filed no later than July 17. See Fed. R. Bankr. P. 3015(b). It was filed late on August 1. Because the plan was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by General Order 05-03, ¶ 3(a)(1). This means that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a).

While the debtor has filed a plan on August 1, well after the due date had expired, the debtor has not served it together with a motion requesting its confirmation. The debtor has unnecessarily delayed confirmation of a plan to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

28. 08-26576-A-13G MICHELLE WATSON-TAYLOR HEARING - MOTION FOR
RDG #4 ORDER OF DISMISSAL
8-11-08 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,072.50 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

29. 08-28579-A-13G VIRGINIA RUEDA HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-11-08 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to commence making plan payments and has not paid approximately \$3,737 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).

30. 08-29079-A-13G CASIMIRO RODRIGUEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-30-08 [10]

Final Ruling: The trustee has voluntarily dismissed the motion. The case shall remain pending.

31. 08-28682-A-13G LUIS/ARACELI GUTIERREZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-4-08 [12]

Final Ruling: The trustee has voluntarily dismissed the motion. The case shall remain pending.

32. 08-27884-A-13G ANTHONY McBRIDE HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-1-08 [34]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor failed to appear at the meeting of creditors on July 30 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

33. 08-29085-A-13G LUCIA MARQUEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-25-08 [7]

Final Ruling: The trustee has voluntarily dismissed the motion. The case shall remain pending.

34. 08-27794-A-13G ALFRED/VALERIE DRUMMOND HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-1-08 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor failed to appear at the meeting of creditors on July 30 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

35. 08-25699-A-13G JUANITA STALLWORTH HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
8-11-08 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to commence making plan payments and has not paid approximately \$2,069 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).