

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

June 23, 2014 at 2:00 p.m.

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1. 13-22107-A-13 DARRELL/JOANNE BROWN MOTION TO
JPJ-2 DISMISS CASE
6-2-14 [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 discharge the duties required by 11 U.S.C. § 521(f), Section 6.02 of the confirmed plan, and Local Bankruptcy Rule 3015-1(b)(5) by providing the trustee with a copy of the debtor's 2013 income tax return as well wage and income documentation. This failure to cooperate with the trustee also violates 11 U.S.C. § 521(a)(3) and warrants dismissal of the case.

2. 13-35625-A-13 MICHAEL REED MOTION TO
JPJ-2 DISMISS CASE
6-3-14 [64]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

This case was filed on December 12, 2013. Despite a reasonable opportunity to do so, the debtor has not confirmed a plan. However, after this dismissal motion was filed, the debtor filed, served, and set for hearing a motion to confirm a modified plan. The motion will be heard on August 4, 2014. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on August 4, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a plan within a reasonable time after filing the petition has caused delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

3. 14-24160-A-13 AHMED CHARTAEV MOTION TO
JPJ-3 DISMISS CASE
5-27-14 [21]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

First, the debtor failed to appear at the meeting of creditors. Appearance is

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mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. On the petition, the debtor failed to disclose six earlier bankruptcy cases filed within the prior 8 years. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fifth, the debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$70 due on May 25 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

The foregoing indicates that the debtor has willfully failed to abide by orders of the court and to appear before the court in the proper prosecution of this case as well as the earlier cases he has concealed on this petition. See 11 U.S.C. § 109(g)(1). Therefore, pursuant to 11 U.S.C. § 349(a) this case is dismissed with prejudice.

4. 14-24160-A-13 AHMED CHARTAEV

ORDER TO
SHOW CAUSE
5-28-14 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The order to show cause will be discharged because the court has dismissed the case on the trustee's motion.

5. 13-27681-A-13 RODNEY/MICHELLE HYLTON MOTION TO
JPJ-2 DISMISS CASE
6-2-14 [59]

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