

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 07-00903-dd

ORDER DISMISSING CASE

The relief set forth on the following pages, for a total of 5 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
05/15/2007**



Entered: 05/16/2007


US Bankruptcy Court Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

In re:

Wilhelmina Coard,

Debtor.

Case No. 07-00903-dd
Chapter 7

ORDER DISMISSING CASE

This proceeding comes before the Court on the motion of the United States Trustee for Region Four (the UST) pursuant to 11 U.S.C. §§ 109(h)(1), 521(b) and 707(a) to dismiss this case due to the debtor's failure to obtain credit counseling within 180 days prior to the petition filing date. The Court has jurisdiction to hear and decide this matter. 28 U.S.C. § 1334. This proceeding is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

FINDINGS OF FACT

1. The debtor, Wilhelmina Coard, filed the present chapter 7 case on February 23, 2007.
2. Also on February 23, the debtor filed a Certificate of Credit Counseling in compliance with 11 U.S.C. § 521(b)(1) which attempted to demonstrate compliance with 11 U.S.C. § 109(h).¹ The Certificate stated that the debtor received credit counseling on August 9, 2006, which is one hundred ninety-eight (198) days before the filing of the bankruptcy case. The debtor also filed with the petition "Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement," incorrectly stating under oath that a briefing from an approved credit

¹ Further reference to Title 11 of the United States Code will be by section number only.

counseling agency had been received “[w]ithin the 180 days **before the filing of my bankruptcy case.**” (Emphasis in original).

3. The UST moved to dismiss this case because the debtor did not receive credit counseling from an approved nonprofit budget and credit counseling agency during the 180 days prior to the petition date. The UST argues that the failure to timely obtain credit counseling for the present case makes the debtor ineligible to file for bankruptcy relief pursuant to § 109(h)(1).

4. The debtor has not submitted a certification satisfactory to the Court that describes exigent circumstances that merit a waiver of the requirement of credit counseling and shows that the debtor requested credit counseling services from an approved agency but was unable to obtain the services during the five-day period beginning on the date the debtor made the request. § 109(h)(3)(A).

5. The debtor has not filed with the Court a certification that describes incapacity, disability or active military duty in a military combat zone that would merit an exemption from the requirement of credit counseling. § 109(h)(4).

6. Credit counseling services were reasonably available to the debtor in this district at all relevant times. The debtor resides in this district. § 109(h)(2)(A).

7. At the hearing on this matter counsel for the debtor acknowledged that the debtor’s credit counseling occurred more than 180 days prepetition. In the Objection to the UST’s motion counsel explained the debtor’s failure to comply with § 109(h)(1) as follows: the debtor was advised to obtain credit counseling prior to scheduling an intake appointment with the South Carolina Pro Bono Program and did so; thereafter, upon learning that the filing fee could not be waived, she had to wait until she received her income tax refund to pay the filing fee.

DISCUSSION AND CONCLUSIONS OF LAW

ISSUE: May an individual debtor who obtained credit counseling 198 days prepetition be deemed to have complied with the credit counseling requirement of § 109(h) which requires credit counseling to take place during the 180-day period preceding the date of filing of the petition?

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (2005), imposed a prepetition credit counseling requirement upon individual debtors seeking bankruptcy relief. Section 109(h)(1) provides in relevant part:

[A]n individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

In addition to the requirement that an individual debtor participate in a credit counseling session, § 521(b)(1) directs the debtor to file with the Court “a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor.”

This Court ruled in In re McBride, 354 B.R. 95 (Bankr. D.S.C. 2006), that an individual debtor must timely obtain credit counseling and file a certificate to that effect “unless one of three exceptions to the requirement applies.” Id. at 98. The three exceptions are: (1) that the UST has determined for the district where the debtor resides that credit counseling is not reasonably available; (2) that the debtor requested credit counseling prepetition but was unable to obtain it due to exigent circumstances prior to filing; and (3) that the debtor could not complete the credit counseling requirement due to incapacity, disability, or active military service, as defined by § 109(h)(4). The facts of this case do not come within any of the three exceptions.

Despite the language of the statute, the debtor requests relief on equitable grounds under § 105(a) in that the debtor obtained pre-petition credit counseling, though not within the 180-day period preceding the filing of the petition. Although the Court is sympathetic to the debtor's request and common sense would seem to dictate that a waiver be granted to this debtor, such relief is not contemplated or allowed by the law. The Court cannot grant some sort of equitable exception to this debtor as equity may not be exercised contrary to the unambiguous language of § 109 in the total absence of any evidence which would bring the debtor within one of the statutory exceptions.

Because the debtor failed to obtain prepetition credit counseling during the 180-day period established by § 109(h)(1) and failed to file a true and correct statement to that effect with the petition, the debtor is ineligible to file for chapter 7 bankruptcy relief, and cause exists to dismiss this case under § 707(a). The Court's ruling is consistent with McBride, supra, In re Dansby, 340 B.R. 564 (Bankr. D.S.C. 2006), and In re Herndon, Misc. Pro. 06-90004-jw (Bankr. D.S.C. Dec. 21, 2006). Therefore, this case should be and hereby is dismissed without prejudice.

AND IT IS SO ORDERED.