

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Anthony Hair,

Debtor(s).

C/A No. 23-02290-EG

Chapter 13

ORDER

THIS MATTER came before the Court for a hearing on September 6, 2023, to consider the Motion to Dismiss Case with Prejudice (the “Motion to Dismiss”) filed by Chapter 13 Trustee Pamela Simmons-Beasley (the “Trustee”)¹ and the Order Dismissing Case and Rule to Show Cause (the “Order”) entered by the Court.² The Trustee and counsel for Anthony Hair (“Debtor”), Benjamin R. Matthews (“Counsel”), appeared at the hearing. Despite being served with the Motion to Dismiss and the Order requiring Debtor to be present,³ Debtor failed to appear in Court. Debtor filed the above-captioned case in violation of the order dismissing his most recent prior bankruptcy case with prejudice. The issue before the Court is what sanctions should be imposed. Based on the following findings of fact and conclusions of law, the Court imposes a monetary sanction on Counsel of \$1,000.00 and bars Debtor from refile for a period of three years.

FINDINGS OF FACT

Debtor is familiar with the bankruptcy forum. This is his fifth bankruptcy filing in the past 10 years and the fourth in the past two years. On January 7, 2013, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of the late Johnny Simpson as counsel, initiating C/A No. 13-00129-jw (the “First Case”). The First Case was dismissed on January 16, 2015, due to Debtor’s failure to make plan payments. On August 2, 2021, Debtor filed

¹ ECF No. 7, filed Aug. 7, 2023.

² ECF No. 10, entered Aug. 15, 2023.

³ Counsel also represented to the Court that he advised the Debtor of the need to appear at the hearing.

a petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of Michael R. Culler as counsel, initiating C/A No. 21-02029-dd (the “Second Case”). The Second Case was dismissed on February 22, 2022 for Debtor’s failure to file a confirmable plan. On April 12, 2022, Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code again with the assistance of Michael R. Culler as counsel, initiating C/A No. 22-00960-dd (the “Third Case”). The Third Case was dismissed on August 19, 2022 on the Debtor’s motion pursuant to 11 U.S.C. § 1307(b). A month later, on September 28, 2022, Debtor filed another petition for relief under Chapter 13 of the Bankruptcy Code with the assistance of a third attorney, Robert R. Meredith, Jr., initiating C/A No. 22-02619-eg (the “Fourth Case”). The Court entered a Consent Order in the Fourth Case providing that if the case was dismissed within one year of the date of entry of the order, the Debtor would be barred from filing a petition for relief under Chapters 11, 12, or 13 of the Bankruptcy Code for a period of one year. The Fourth Case was dismissed with prejudice on April 17, 2023 for Debtor’s failure to file a confirmable plan; thus, Debtor was barred from refiling until April of 2024.

Less than four months after the last dismissal and during the prejudice period, Debtor filed his fifth petition for relief under Chapter 13 of the Bankruptcy Code on August 3, 2023, commencing this case with the assistance of Counsel. Attached to the bare-boned voluntary petition, Debtor included a listing of the four cases previously filed with accurate case numbers, filing dates, and dismissal dates.

The Trustee filed the Motion to Dismiss requesting that the Court dismiss Debtor’s case with prejudice for two years as to all chapters of the Bankruptcy Code and impose such sanctions as it finds appropriate upon Counsel. The Court scheduled a hearing on the Motion to Dismiss for

September 6, 2023, with objections due August 30, 2023.⁴ On August 15, 2023, the Court entered the Order dismissing Debtor's case and holding that the automatic stay provided by 11 U.S.C. § 362 triggered by the filing of the current case was void *ab initio*. The Order further retained jurisdiction to consider possible sanctions and required Debtor and Counsel to appear at the September 6, 2023 hearing. Despite proper service of both the Order⁵ and the Trustee's Motion to Dismiss, no responses or objections were filed.

At the hearing, Counsel apologized and took responsibility for the error, stating that the filing of Debtor's case within the prejudice period was an unintentional oversight by his office. The Trustee requested that Counsel's fees be disgorged, and Counsel agreed that would be an appropriate sanction. Following the hearing on the Motion to Dismiss and the Order and only upon the request of the Court, Counsel filed the Disclosure of Compensation of Attorney for Debtors (Form B2030) on August 17, 2023 (the "Disclosure of Compensation"). The Disclosure of Compensation indicates that Counsel agreed to accept a total of \$4,300.00 for the services to be provided, with \$1,008.00 paid upfront (including the \$313.00 filing fee) and a \$3,605.00 balance to be paid through the Chapter 13 plan.⁶

CONCLUSIONS OF LAW

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and the Court may enter a final order. The Order previously dismissed this case and deemed the automatic stay to have not taken effect by the filing. The issue left for the Court to determine is what sanctions should be imposed on Counsel and the Debtor.

⁴ ECF No. 8.

⁵ ECF No. 13.

⁶ ECF No. 15, filed Sept. 6, 2023.

Consistent with the requirements of the Federal Rule of Bankruptcy Procedure 9011(b), SC LBR 9011 provides, in pertinent part:

Duty to Determine Eligibility. A debtor and attorney for the debtor shall have the duty to ascertain that no previous order, statute, or rule makes the debtor ineligible to file or bars the applicable filing of a petition in bankruptcy before this Court. The signing and filing of a petition by a debtor and/or attorney for the debtor will be deemed a certification to the Court that the debtor is eligible to file the petition and is not in violation of a previous order of dismissal with prejudice, statute, or rule.

SC LBR 9011-1(d). When an attorney undertakes representation of a client and prepares to file a bankruptcy petition on behalf of that client, the attorney has an affirmative duty to conduct reasonable due diligence to determine, among other things, that the client is eligible for bankruptcy protection. *See, e.g., In re Brown*, No. CIV.A. 02-00089-W, 2002 WL 368443, at *1 (Bankr. D.S.C. Jan. 31, 2002). “The duty includes checking Court records and discovering whether a debtor’s previous case was dismissed with prejudice to bar a refiling for [a] period of time.” *In re Johnson*, C/A No. 06-01923-JW, slip op. at 3 (Bankr. D.S.C. June 16, 2006) (citation omitted). The Court has the power to sanction litigants and their counsel under 11 U.S.C. § 105 for a blatant disregard for clear orders and rules. *See In re Kennedy*, C/A No. 18-01534-HB, slip op. at 4 (Bankr. D.S.C. Sept. 9, 2021); 11 U.S.C. § 105(a). “[T]o protect the integrity of orders dismissing a case with prejudice, this Court has consistently sanctioned debtors’ counsel when they improperly file a case during [an] existing prejudice period.” *Johnson*, slip op. at 4-5 (citing cases).

Possible sanctions for violating a bar on refiling include: (1) disgorgement of fees; (2) other monetary fines; (3) *ex parte* dismissal of the case and annulment of the automatic stay; and (4) extensions of the bar on refiling. *Brown*, 2002 WL 368443, at *1. As for Counsel, disgorgement of fees is particularly appropriate in this situation, as a fee for filing a bare-boned petition during a prejudice period is not reasonable and simply unacceptable. *See In re Diaz*, No. 01-11798-W,

2001 WL 1805999, at *1 (Bankr. D.S.C. Dec. 7, 2001) (“[W]here the clear and unambiguous order of this Court which prohibits refiling of bankruptcy is violated, this Court believes the bar to refiling should be extended and that Debtor’s counsel should not be able to retain any compensation or retainer paid to him for services in furtherance of such violation.”).

To protect the integrity of the bankruptcy system and orders dismissing a case with a prejudice period and to prevent fraud or abuse, the Court finds that, under the circumstances of this case, it is appropriate to sanction Counsel in the amount of \$1,000.00.⁷ The attachment to the Voluntary Petition listing the cases the Debtor had previously filed indicates Counsel was aware of Debtor’s prior cases but failed to take the additional step of ensuring no prejudice period was in place. Counsel stated at the hearing that neither he nor his office were aware of the prejudice period, so that this filing resulted from negligence rather than an intentional attempt to circumvent an order of the Court. However, orders of this Court must be respected, and Counsel must be penalized for violating them and failing to conduct the proper due diligence to ensure Debtor’s eligibility.⁸ Accordingly, the Court will assess a total fine of \$1,000.00 against Counsel, representing disgorgement of fees received plus a monetary sanction.

The Court also finds that adding a three-year prejudice period to the dismissal of Debtor’s case is warranted under these circumstances. The Fourth Circuit has recognized that debtors can be barred from refiling other bankruptcy cases when there is evidence of bad faith. *In re Pressley*, 518 B.R. 867, 872 (Bankr. D.S.C. 2014) (citing *Colonial Auto Ctr. v. Tomlin (In re Tomlin)*, 105

⁷ The amount consists of the disgorgement of \$695.00 that he was paid for filing the petition and an additional \$305.00 as a monetary sanction.

⁸ The Court has noticed several issues with Counsel’s filings in the recent months which have required unnecessary time being spent by parties in interest to correct or bring the issues to Counsel’s attention, not to mention limited judicial resources being spent to address the deficiencies or problems. While the sanctions imposed in this case stand on their own facts, the Court hopes that the imposition of the monetary sanction serves as notice to Counsel—and the bankruptcy bar as a whole—that the Court considers the fulfillment of an attorney’s duties an important matter and that failure to fulfill such duties or to respect prior orders of the Court will not be tolerated.

F.3d 933, 937 (4th Cir. 1997)). “The general rule is that dismissal with prejudice is warranted when there is ‘egregious behavior’ that prejudices creditors and is abusive of the bankruptcy system.” *Id.* (quoting *In re Tomlin*, 105 F.3d at 937). Here, it is not clear whether Debtor was simply negligent or intended to subvert an order of this Court in filing this case. Regardless, Debtor’s failure to appear at the hearing despite receiving notice from his counsel and the Court that his appearance was required shows a blatant lack of respect for this Court. Accordingly, to prevent Debtor from filing another bankruptcy petition that could unreasonably delay and prejudice his creditors, the Court will add a three-year prejudice period to the dismissal of this case.

IT IS, THEREFORE, ORDERED:

1. The Court sanctions Counsel in the amount of \$1,000.00. The Sanction imposed herein shall be paid within ten (10) days from the entry of this Order. The Sanction shall be paid to one of the following, at Counsel’s discretion: South Carolina Legal Services, South Carolina Appleseed Legal Justice Center, the South Carolina Bar Pro Bono Program, or the Clerk of this Court (for deposit into the United States Treasury).⁹

2. Counsel shall file an affidavit attesting to his compliance with paragraph 1 within ten (10) days from the entry of this Order.

3. The dismissal of this case provided by the Order Dismissing Case and Rule to Show Cause entered on August 15, 2023 is with prejudice for a period of **three (3) years** from the entry


⁹ This payment is in the nature of a sanction and may not be used by Counsel to reduce taxable income. Counsel shall provide a copy of this Order with the payment of the Sanction to the recipient of his choice listed above so that the recipient is aware that the funds received are not in the nature of a charitable contribution.

of this Order as to any subsequent filing by Debtor Anthony Hair under any chapter of the Bankruptcy Code.

AND IT IS SO ORDERED.

**FILED BY THE COURT
09/13/2023**




Elisabetta G. M. Gasparini
US Bankruptcy Judge
District of South Carolina

Entered: 09/13/2023