



SO ORDERED.
SIGNED this 28th day of March, 2025

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.



Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

AMANDA LYNN MITCHELL

Debtor

Case No. 3:24-bk-32155-SHB
Chapter 7

**MEMORANDUM AND ORDER ON
U.S. TRUSTEE'S MOTION TO DISMISS AND REQUEST FOR BAR**

This matter came for hearing on March 27, 2025, on the U.S. Trustee's Motion to Dismiss and Request for Bar to Re-Filing for 365 Days ("Dismissal Motion") filed on February 28, 2025, asking the Court, pursuant to 11 U.S.C. § 707(a) to impose a 365-day bar against Debtor re-filing a case under any chapter for her "repeated conduct of failing to abide by court orders, failing to completely and accurately file required bankruptcy documentation, and failure to attend required 341 meetings of creditors." [Doc. 32 at pp. 1-2.] Debtor, *pro se*, did not appear at the hearing or otherwise respond to the Dismissal Motion.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor filed Case No. 17-12856 in the United States Bankruptcy Court for the Southern District of Florida on March 9, 2017, and

received a Chapter 7 discharge on July 26, 2017. Debtor has since filed the following two *pro se* bankruptcy cases in this Court replete with delinquent document filings and noncompliance with orders of this Court, and Debtor has failed without explanation to appear at meetings of creditors and hearings.

(A) In Case No. 3:24-bk-31776-SHB, filed on October 11, 2024, Debtor did not perform the following requirements, resulting in entry of an Order on November 22, 2024, dismissing the case “for willful failure of the debtor to abide by orders of the court [and] to appear before the court in proper prosecution of the case.” [No. 3:24-bk-31376-SHB, ECF No. 29 (quoting § 109(g)(1))];

(1) file the Certificate of Credit Counseling; Statement Regarding Payment Advices; Statement of Financial Affairs; and Chapter 7 Statement of Current Monthly Income as required by 11 U.S.C. §§ 109(h) and 521, Federal Rule of Bankruptcy Procedure 1007(b), and the Notice of Additional Documents to Be Filed dated October 11, 2024 [No. 3:24-bk-31776-SHB, ECF No. 7];

(2) pay the filing fee as directed in the Order Approving Payment of Filing Fee in Installments entered October 11, 2024 [No. 3:24-bk-31776-SHB, ECF No. 8];

(3) file a complete and accurate Schedule A/B and Summary of Assets and Liabilities and Certain Statistical Information that reflected any assets [No. 3:24-bk-31776-SHB, ECF Nos. 15, 16];

(4) amend the Verification of Creditor Matrix and the Master Address List to reflect new creditors added through Schedule E/F or pay the \$34.00 filing fee as directed by the Clerk on October 29, 2024 [No. 3:24-bk-31776-SHB, ECF No. 24];

(5) attend the meeting of creditors on November 12, 2024 [No. 3:24-bk-31776-SHB, ECF Nos. 2, 27]; and

(6) appear at the hearing held November 21, 2024, as directed by the Court's Order entered on October 28, 2024 [No. 3:24-bk-31776-SHB, ECF No. 14], directing Debtor to appear and show cause why the case should not be dismissed for non-compliance.¹

(B) Twenty-one days after dismissal of Case No. 3:24-bk-31776-SHB on November 22, 2024, Debtor filed this case on December 13, 2024. She has not complied with the following requirements:

(1) attend the meeting of creditors on January 21, 2025, or February 18, 2025 [Docs. 2, 24, 30];

(2) appear at the hearing held February 6, 2025, as directed by the Notice of Hearing accompanying the Motion to Declare Debtor Ineligible for Discharge Pursuant to 11 U.S.C. § 727(a)(8) filed by the United States Trustee on January 16, 2025 [Doc. 21]; and

(3) appear at the hearing held March 27, 2025, as directed by the Notice of Hearing accompanying the Dismissal Motion filed by the United States Trustee on February 28, 2025 [Doc. 32].

¹ Debtor was also noticed for the November 21, 2024 hearing by the Notice of Hearing accompanying the Motion to Declare Debtor Ineligible for Discharge Pursuant to 11 U.S.C. § 727(a)(8) filed by the United States Trustee on October 22, 2024 [No. 3:24-bk-31776-SHB, ECF No. 13], by which the United States Trustee sought an order declaring Debtor ineligible for a discharge under the eight-year limitation imposed by 11 U.S.C. § 727(a)(8). Based on her discharge in Case No. 17-12856, March 7, 2025, was the earliest date that she could obtain another discharge under Chapter 7.

II. CONCLUSIONS OF LAW

One of the primary goals of the Bankruptcy Code is to relieve the honest but unfortunate debtor of her indebtedness so that she may make a fresh start through a discharge of debts in exchange for liquidation or repayment of assets. *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). Nevertheless, “a debtor has no constitutional or ‘fundamental’ right to a discharge in bankruptcy.” *Grogan v. Garner*, 498 U.S. 279, 286 (1991). Thus, the Code authorizes courts to dismiss Chapter 7 cases “for cause, including . . . unreasonable delay by the debtor that is prejudicial to creditors.” 11 U.S.C. § 707(a)(1). The party seeking dismissal under § 707(a) bears the burden of proving cause by a preponderance of the evidence. *Simon v. Amir (In re Amir)*, 436 B.R. 1, 16 (B.A.P. 6th Cir. 2010). Because cause is not defined by the Code and the examples listed in § 707(a) “are illustrative only” and not exclusive, the determination of cause is within the discretion of the court and is decided on a case-by-case basis. *Id.* Although “a debtor’s ineligibility for a discharge does not, by itself, constitute cause for dismissal [under § 707(a)],” *In re Thornton*, No. 11-21007, 2012 WL 3013931, at *2 (Bankr. S.D. Ga. July 12, 2012), a debtor’s “repeated refusal to appear and testify at a 341 Meeting underscores her disregard of the duties the Bankruptcy Code imposes on a Chapter 7 debtor and constitutes an unduly prejudicial delay to the creditors of her estate, within the meaning of 11 U.S.C. § 707(a)(2).” *In re Antar*, No. 24-30480 (AMN), 2024 WL 5000502, at *2-3 (Bankr. D. Conn. Nov. 8, 2024).

Additionally, the Bankruptcy Code provides the following statutory limitation on a debtor’s ability to file successive cases within a six-month period:

[N]o individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if –

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case[.]”

11 U.S.C. § 109(g).² “[C]ourts routinely construe repeated failures to abide by statutory or judicial directives or to act with the appropriate diligence as supporting an inference of willful and deliberate conduct.” *In re Wen Hua Xu*, 386 B.R. 451, 456 (Bankr. S.D.N.Y. 2008) (citations omitted). Accordingly, if a court finds sufficient cause, it is authorized by 11 U.S.C. §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in 11 U.S.C. § 109(g)(1). *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 737 (B.A.P. 6th Cir. 2010).

Debtor filed her first *pro se* Chapter 7 case, No. 3:24-bk-31776-SHB, in October 2024, which was dismissed because she did not file a Certificate of Credit Counseling or all of the required statements and schedules necessary to proceed in the case, nor did she pay the filing fee or appear for her meeting of creditors or at the hearing on the Court’s show cause order and the United States Trustee’s motion concerning her ineligibility for a discharge. Notwithstanding that the Court dismissed that case “for willful failure of the debtor to abide by orders of the court [and] to appear before the court in proper prosecution of the case” [No. 3:24-bk-31376-SHB, ECF Doc. 29 (quoting § 109(g)(1))], Debtor filed this case three weeks later.

In this case, although she filed the documents that were unfiled in the prior case and paid her filing fee, Debtor still did not appear for a meeting of creditors (even though the Chapter 7 Trustee adjourned the meeting, thus giving Debtor a second opportunity to appear), nor did Debtor

² Section 109(g) was enacted to “curb ‘abusive repetitive bankruptcy filings by debtors,’” *In re Bryant*, 649 B.R. 342, 349 (Bankr. S.D. Ga. 2023), and “the filing of meritless petitions in rapid succession to improperly obtain the benefit of the Bankruptcy Code’s automatic stay provisions as a means of avoiding foreclosure under a mortgage or other security interest.” *In re Cline*, 474 B.R. 789 (Table), No. 11-8075, 2012 WL 1957935, at *7 (B.A.P. 6th Cir. June 1, 2012) (citations omitted).

appear at the hearing on her ineligibility for a discharge held on February 6, 2025, or at the hearing on the Dismissal Motion held March 27, 2025, even though the Dismissal Motion expressly requests imposition of a bar against Debtor re-filing another bankruptcy case for 365 days. Based on these facts, there is sufficient cause to dismiss this case under § 707(a) and to impose a 365-day bar under §§ 105(a) and 349(a).

For the foregoing reasons, constituting the Court's findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, applicable to contested matters by virtue of Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. The Dismissal Motion filed by the United States Trustee on February 28, 2025 [Doc. 32], is GRANTED.

2. As authorized by 11 U.S.C. § 349(a), incorporating therein 11 U.S.C. § 109(g)(1), based on her "willful failure . . . to abide by orders of the court, . . . to appear before the court in proper prosecution of the case[,]" and to otherwise comply with the provisions of the Bankruptcy Code, Amanda Lynn Mitchell is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 365 days from the date of entry of this Order.

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