



SO ORDERED.

SIGNED this 24th day of July, 2024

**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

MARILY MARCELLA LEWIS

Case No. 3:24-bk-30944-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

The Court held a hearing on July 24, 2024, on (1) the Order entered June 27, 2024 (“June 27 Order”), directing Debtor to appear and show cause why this case should not be dismissed and, as authorized by 11 U.S.C. § 349(a), incorporating 11 U.S.C. § 109(g), why the Court should not impose a 270-day bar against the filing of a bankruptcy case by Debtor under any chapter of Title 11 “for her repeated and willful failure to abide by orders of this Court or otherwise comply with the provisions of the Bankruptcy Code” [Doc. 10], in this and prior cases; and (2) the Trustee’s Motion to Dismiss filed by Debra L. Miller, Chapter 13 Trustee, on June 20, 2024 [Doc. 8]. Debtor did not file a response to either the June 27 Order or the Trustee’s Motion to Dismiss, did not file any of the delinquent documents, and did not appear at the hearing on July 24, 2024.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed three *pro se* bankruptcy

cases since March 2023, each with delinquent document filings, noncompliance with orders of this Court, and Debtor's failure to appear at any hearing. The histories of the cases are summarized as follows:

(A) in Case No. 3:23-bk-30546-SHB, filed on March 29, 2023, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by 11 U.S.C. § 109(h); (ii) file the Certificate of Credit Counseling; Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period; Chapter 13 Plan; and/or Debtor Electronic Noticing Election (DeBN) required by 11 U.S.C. §§ 109(h), 521(a), and 1321, Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b), and E.D. Tenn. LBR 9036-1(b); and (iii) appear at the hearing held April 26, 2023, on the Court's show cause order entered April 13, 2023, and the Chapter 13 Trustee's Motion to Dismiss filed March 31, 2023, resulting in dismissal on April 26, 2023;

(B) in Case No. 3:23-bk-31441-SHB filed on August 16, 2023, Debtor failed to (i) file the Statement Regarding Payment Advices, Schedules A/B through J, Declaration About Schedules, Summary of Assets and Liabilities and Certain Statistical Information, Statement of Financial Affairs, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period, Chapter 13 Plan and DeBN required by §§ 521(a)(1) and 1321, Rules 1007(b) and 3015(b), and LBR 9036-1(b); and (ii) appear at the hearing held September 27, 2023, on the Court's show cause Order entered on September 5, 2023, resulting in dismissal on September 27, 2023; and

(C) in this case, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by § 109(h); (ii) file the Certificate of Credit Counseling; Statement Regarding

Payment Advices; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period; Chapter 13 Plan; and/or DeBN required by §§ 109(h), 521(b)(1), and 1321, Rules 1007(b) and 3015(b), E.D. Tenn. LBR 9036-1(b)(1), and the Notice of Additional Documents to Be Filed dated June 6, 2024; and (iii) appear at the hearing held July 24, 2024, on the Court's June 27 Order and the Trustee's Motion to Dismiss.

II. CONCLUSIONS OF LAW

Eligibility to file for bankruptcy relief is conferred through 11 U.S.C. § 109(h), which, *inter alia*, requires individual debtors to receive a credit counseling briefing from an approved nonprofit budget and credit counseling agency within the 180 days immediately preceding the filing of a bankruptcy petition. Additionally, under 11 U.S.C. § 1325(a)(3) and (7), debtors are required to file and proceed in their Chapter 13 cases in good faith, and likewise, to propose their plans in good faith, with an almost identical standard as cases concerning good faith and dismissal under 11 U.S.C. § 1307(c). *In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006). Whether a debtor has filed in bad faith requires examination of the totality of the circumstances and is based on past and present circumstances. *Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F.3d 734, 738 (6th Cir. 1994); *In re Glenn*, 288 B.R. 516, 519-20 (Bankr. E.D. Tenn. 2002).

In making the good faith determination, courts generally focus on the following factors:

(1) the debtor's income; (2) the debtor's living expenses[;] (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances the debtor may be subject to, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on

the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

Soc’y Nat’l Bank v. Barrett (In re Barrett), 964 F.2d 588, 592 (6th Cir. 1992). Other relevant factors include “the accuracy of the plan’s statements of the debts, expenses and percentage repayment of unsecured debt[,] and whether any inaccuracies are an attempt to mislead the court[.]” *Hardin v. Caldwell (In re Caldwell)*, 851 F.2d 852, 859 (6th Cir. 1988) (citation omitted).

Courts also look to the following:

the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor’s motive in filing the petition; how the debtor’s actions affected creditors; the debtor’s treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

Alt v. United States (In re Alt), 305 F.3d 413, 419 (6th Cir. 2002) (citation omitted). Weighing these factors – “which ‘may circumstantially reflect the debtor’s motivation, and ultimately his ‘good faith,’” in seeking relief under chapter 13” – assists courts in determining whether “the debtor’s purpose in filing for chapter 13 relief is consistent with the underlying purpose and spirit of chapter 13 – i.e., financial ‘rehabilitation through repayment of debt’ – [and if] the filing is likely in good faith.” *Condon v. Brady (In re Condon)*, 358 B.R. 317, 326 (B.A.P. 6th Cir. 2007) (internal citations omitted).

Although courts must find that imposition of a sanction “be commensurate with the egregiousness of the conduct,” the purpose of adding § 109(g) was to address abuse of the system including “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). “While multiple filings are not, in and of themselves, improper or indicative of bad faith, a history of multiple filings and

dismissals may be construed as bad faith.” *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 735 (B.A.P. 6th Cir. 2010) (citing *In re Glenn*, 288 B.R. 516, 520 (Bankr. E.D. Tenn. 2002)). Further, if there is sufficient cause, courts have the authority under 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). *Id.* at 737.

Debtor has filed three *pro se* Chapter 13 bankruptcy petitions since March 2023, but has not filed the required statements and schedules in any of the cases and has failed to file the certification reflecting that she took the required pre-petition credit counseling briefing in two cases. Debtor also has failed to appear before the Court in response to its orders or the motions to dismiss filed by the Chapter 13 Trustee. Furthermore, Debtor did not appear at the hearing held July 24, 2024, on the June 27 Order and the Trustee’s Motion to Dismiss or otherwise respond to June 27 Order, notwithstanding that it expressly referenced imposition of a 270-day bar on refiling. A totality of the circumstances evidences that Debtor, who has repeatedly and willfully failed to comply with orders of this Court and the Bankruptcy Code, did not file this case in good faith.

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 Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. Because Debtor did not file the Certificate of Credit Counseling reflecting that she took the required credit counseling briefing within the 180 days prior to the filing of this case; the Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Statement of Financial Affairs; Summary of Assets and Liabilities and Certain Statistical Information; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period; Chapter 13 Plan; and DeBN required by 11 U.S.C. §§ 109(h), 521(a)(1) and 1321; Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); E.D. Tenn. LBR 9036-1(b)(1); and the

Notice of Additional Documents to Be Filed dated June 6, 2024; and did not appear at the hearing held on July 24, 2024, this Chapter 13 bankruptcy case is DISMISSED.

2. Likewise, the Motion to Dismiss filed by the Chapter 13 Trustee on June 20, 2024 [Doc. 8], is GRANTED.

3. As authorized by 11 U.S.C. § 349(a), incorporating therein 11 U.S.C. § 109(g)(1), based on her repeated and “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, Marilyn Marcella Lewis is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 270 days from the date of entry of this Order.

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