

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

IN RE: GARY M. and TAMMY M. PETERSON

CASE NO.: 4:05-40013T

ORDER

On January 11, 2006, came on for hearing the Trustee's Motion to Dismiss for Failure to Submit Federal Tax Return pursuant to 11 U.S.C. § 521(e)(2)(A). This Court has jurisdiction under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(A). The following order constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052 made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014. The parties appeared by and through their attorneys and four stipulations were entered into the record:

- 1) Mr. Peterson's tax return, required to be provided to the Trustee by the first meeting or the date first set for the first meeting of creditors, was not provided.
- 2) Transcripts were provided to the Trustee December 21st, after the date of the first meeting, which confirmed the tax returns were filed.
- 3) Mrs. Peterson has not provided anything to the Trustee reflecting tax returns being filed.
- 4) Schedule I, filed in the Debtors' case, reflects Mrs. Peterson is a homemaker and no income is listed for her.

Section 521(e) provides in pertinent part as follows:

(2)(A) the debtor shall provide--

- (i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed;

.....

(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

11 U.S. C. § 521(e)(2).

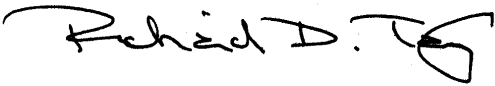
After the hearing, debtors' counsel filed a Brief in Response to Trustee's Motion to Dismiss. The debtors' post trial brief sets forth extensive facts not stipulated to or introduced at trial that go directly to the defense of "circumstances beyond the control the debtor," as referenced in § 521(e)(2)(B). However, these facts simply do not form part of the record and are, accordingly, disregarded by the Court in their entirety.

It is clear from the stipulated facts that the debtors did not comply with the requirements of § 521(e)(2)(A); dismissal can be the only result. No facts were presented at trial supporting a defense of circumstances beyond the debtors' control. The suggestion that Mrs. Peterson's homemaker status automatically demonstrates that she does not have to file a tax return is misplaced. Typically, a married person may elect to file a Joint Return with their spouse or a Married Filing Separate Return. In this instance, copies of Mr. Peterson's returns were not introduced at trial. Thus, the Court is unaware if his returns reflect his marital status and provide any information regarding Mrs. Peterson. Accordingly, this case is dismissed.

IT IS SO ORDERED

February 8, 2006

DATE



RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

cc: Clarence Cash
Gary and Tammy Peterson
David D. Coop
U.S. Trustee