

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

IN RE: MARY E. DOSS

CASE NO. 4:05-bk-40001

ORDER

This matter came on for hearing on the Trustee's Motion to Dismiss for Failure to Submit Federal Income 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 pursuant to 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. The parties appeared by and through their attorneys and stipulated to the following facts:

- 1) The debtor, Mary Doss, hired Wolf Realty Company to assist in negotiating a settlement with her Mortgage Company. A foreclosure sale was scheduled for October 18, 2005.
- 2) Just days prior to the foreclosure sale, Wolf Realty Company advised the debtor to go to a local office supply store to purchase the forms to file a Chapter 13 bankruptcy petition. Wolf Realty Company provided legal advice, over the phone, and assisted the debtor in preparing the forms and schedules. The debtor was advised to file the case on October 17, 2005.
- 3) The debtor filed a pro se Chapter 13 case on October 17, 2005.
- 4) However, the debtor was not advised about the requirements of Section 521(e)(2)(A) concerning the requirement that the debtor provide the Trustee with a Tax Return or Transcript within 7 days of the meeting of creditors.
- 5) The meeting of creditors was held on November 21, 2005. The debtor failed to provide the Trustee with the required returns of [sic] transcripts, even though the returns had been filed.
- 6) The Trustee filed a Motion to Dismiss on November 29, 2005 for failure to provide the Trustee with the required returns of [sic] transcripts.
- 7) Pray Law Firm entered an appearance on behalf of the debtor on December 1, 2005. Amended schedules and statements have been filed.

8) A second meeting of creditors was concluded on January 4, 2006. The Trustee was provided with the Tax Transcripts and has reviewed them.

Section 521(e) provides in pertinent part:

(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; and

...

(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).

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 provides little guidance as to the factors or elements that constitute circumstances “beyond the control of the debtor” as referenced in § 521(e)(2)(B). However, in this instance the Court cannot hold that simple ignorance of the law is a circumstance beyond the debtor’s control. As a general rule, it must be presumed that a debtor, acting pro se or represented by counsel, knows she is bound by the Code, including the production requirements of § 521. To avoid dismissal, the debtor must demonstrate that despite this knowledge, circumstances beyond her control prevented the debtor from complying. Simply being unaware of the law is not a circumstance beyond the debtor’s control. To hold otherwise would be to sanction and foster a potentially comprehensive and general ignorance of the law defense which is simply unacceptable under either the prior Code or the Code as amended by the new Act.

At the hearing, the trustee conveyed a reluctance to file motions to dismiss of this nature. The

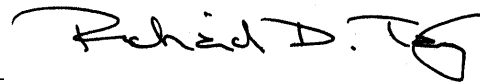
Court cannot suggest what issues a party to a bankruptcy proceeding should or should not bring to the Court's attention. This Court merely rules on justiciable matters which are raised by the pleadings, the exception being those issues which the Court properly raises sua sponte. Once the trustee elects to file the motion, absent settlement or withdrawal, this Court will rule.

Accordingly, this case is dismissed.

IT IS SO ORDERED.

January 25, 2006

DATE



RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

cc: Kent Pray
Mary E. Doss
David D. Coop
U.S. Trustee