

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In the Matter of	:	Case No. 00-1767-CH
DAVID WADE COPELAND,	:	
	:	Chapter 13
Debtor.	:	

ORDER – MOTION TO DISMISS AND SANCTIONS

The Motion to Dismiss by the Chapter 13 Trustee came on for hearing on June 19, 2000. The Trustee appeared by his attorney of record, Elizabeth E. Goodman. Debtor did not appear, and no one appeared for him.

This court has jurisdiction pursuant to 28 U.S.C. §1334 and order of the United States District Court, Southern District of Iowa pursuant to 28 U.S.C. §157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

FINDINGS OF FACT

1. David Wade Copeland filed the present chapter 13 petition on May 15, 2000. In this case, he did file schedules and statements. On page 2 of his voluntary petition, under the section captioned Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet), Debtor disclosed one prior filing which was in the Southern District of Iowa, Case No. 96-7495, filed November 26, 1996. No other filings were reported.

2. The court gave him notice that he must file a plan, a bar date notice, and certificate of service of the bar date notice. Debtor ignored this notice and failed to file a plan.

3. Debtor also filed an application to pay the filing fees in installments. His application recites that he would pay nothing with the filing, but would commence payments on or before June 1, 2000. Debtor has not made any payments on the filing fees.

4. Debtor's history with this court started on November 25, 1996, when he filed a chapter 7 petition, Case No. 96-4795-C. He received a discharge on March 18, 1997, and a final decree was entered on March 28, 1997.

5. Debtor filed his first chapter 13 petition on July 8, 1998, Case No. 98-3030-C. Debtor was not represented by counsel. He filed an application to pay the filing fee in installments, but did not file schedules, statements, or plan. This case was dismissed on July 30, 1998, because Debtor failed to make any of the payments on the filing fee and file the necessary schedules, statements and plan.

6. Debtor filed his second chapter 13 petition on October 2, 1998. Again, Debtor was not represented by counsel. He filed an application to pay the filing fee in installments, but did not pay any part of his filing fees. He did not file any of the schedules or a plan. This case was dismissed on November 16, 1998, because he failed to make any of the payments of the filing fee and failed to file the necessary schedules, statements and plan.

7. Debtor filed his third chapter 13 petition on April 19, 1999. The history of this case was the same as that of his second petition. This case was dismissed on May 14, 1999.

8. Debtor filed his fourth chapter 13 petition on March 6, 2000. The history of this case was the same as that of his second and third chapter 13 petitions. This case was dismissed on March 29, 2000.

9. The instant case is Debtor's fifth chapter 13 filing which was filed on May 15, 2000. A review of the schedules reveals that Debtor would be unable to fund a chapter 13 plan.

10. Debtor has never made an application to the court to extend the time of payment of any installment although the form application clearly advises a debtor of this right.

DISCUSSION

MOTION TO DISMISS

FILING FEES

11 U.S.C. § 1307 governs the conversion of a chapter 13 case to a case under another chapter of the Code and a dismissal of the case. 11 U.S.C. § 1307(c)(2) provides that a case may be dismissed for nonpayment of any fees required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.]. 28 U.S.C. § 1930(a)(1) provides for the payment of filing fees for a case commenced under chapter 13 of title 11.

Debtor has failed to pay any portion of the filing fee as set forth in his application to pay filing fees in installments filed on May 15, 2000. Accordingly, valid grounds for the motion to dismiss are present, and the motion should be granted on that basis.

BAD FAITH FILING

11 U.S.C. § 1307(c) provides that a chapter 13 case may be dismissed for cause and includes ten enumerated instances where cause may be found. The Eighth Circuit has held that a bad faith filing is an included but not enumerated cause. *Molitor v. Eidson (In re Molitor)*, 76 F.3d 218 (8th Cir. 1996), citing *Matter of Smith*, 848 F.2d 813, 816 n. 3 (7th Cir. 1988) ("Thus, under § 1307's express language, a petition is to be rejected for the same reasons that a plan would not be confirmed, including a lack of good faith").

Bad faith is to be determined from a totality of the circumstances which include: (1) whether the debtor accurately stated the debts and expenses; (2) whether the debtor has misled the bankruptcy court by a fraudulent representation; or (3) whether the debtor has unfairly manipulated the bankruptcy code. *Molitor*, 76 F.3d at 220.

Debtor's actions speak louder than words. Five times Debtor made applications to the court to pay his filing fee in installments. Five times Debtor has paid nothing on his filing fees. It is apparent that when he filed his application to pay the filing fee in installments on May 15, 2000, he had no intention of keeping

that commitment to the court. He knew when he filed the application that he was not going to pay any of the installments as promised. He had every reason to believe that the court would grant his request and extend the payment of filings through the end of June 2000.

In addition, Debtor failed to reveal any of his other chapter 13 filings in his petition. The requirement was that Debtor reveal prior bankruptcy case filings within the last six years. Debtor listed the chapter 7 case filed in 1996. He failed to reveal that chapter 13 filings occurred in July 1998, October 1998, April 1999, and March 2000. Debtor has failed to offer any explanation as to why he omitted the four chapter 13 filings between the granting of a discharge in his chapter 7 case on March 18, 1997 and the filing of the present chapter 13 petition.

The fact that Debtor can remember the details of the chapter 7 case in 1996 reveals his apparent capacity to remember the four intervening chapter 13 filings. The court can only conclude that Debtor purposely omitted any reference to the four intervening chapter 13 filings because he wanted to mislead the court as to how many times he had availed himself of the bankruptcy process without having any intention of ever paying the filing fee or filing a plan in any of the chapter 13 cases. Debtor has engaged in a course of conduct which was carried out with the intent to deceive the court.

The court concludes that Debtor has misled this court by fraudulent representation.

Debtor has also manipulated the Bankruptcy Code to his own advantage. Debtor has in effect kept the automatic stay in place since July 8, 1998, without making any payment on the required filing fees or filing a plan. He has failed to abide by the Code and the Rules and orders of this court in any of his chapter 13 filings. It is evident that Debtor has no intention of servicing his debt through a chapter 13 plan.

Further, David Copeland has shown himself to be dishonest and untrustworthy. His apparent motive is to frustrate, delay and defeat creditors without following any of the the statutory requirements.

He has repeatedly abused the bankruptcy process. Accordingly, he is not entitled to protection from this court as a court of equity.

The court concludes that the instant case should be dismissed as a bad faith filing.

SANCTIONS

Trustee's motion prays that the debtor be barred from seeking relief under the bankruptcy code in this district for a period of at least 180 days. Debtor failed to appear at the hearing on June 19, 2000 and has not filed any resistance to subject motion to dismiss.

11 U.S.C. § 349(a), provides:

Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

There is disagreement as to whether this section permits the court to prejudice the debtor with regard to the filing of a subsequent petition. The majority position is that the bankruptcy court can bar filings in excess of 180 days and this court finds that reasoning persuasive. *In re Belden*, 144 B.R. 1010 (Bankr. D. Minn. 1992); *Casse v. Key Bank National Assn. (In re Casse)* 198 F.3d 327 (2nd Cir. 1999; *In re Mattson*, 241 B.R. 629 (Bankr. D. Minn. 1999); *In re Penny*, 243 B.R. 720 (Bankr. W.D. Ark. 2000); *In re Earl*, 140 B.R. 728 (Bankr. N.D. Ind. 1992); *In re Koval*, 205 B.R. 72 (N.D. Tex. 1996); *In re Gros*, 173 B.R. 774 (M.D. Fla. 1994).

Debtor has engaged in abusive practices by serial filings since he received his discharge in his chapter 7 case in 1996. He has filed petitions in succession to improperly obtain the benefit of the automatic stay provision as a means of keeping his creditors at bay. It is clear that Debtor has no intention of effecting financial rehabilitation, and he should be enjoined from future filings to prevent abuse of the bankruptcy process.

Debtor commenced his chapter 7 case on November 25, 1996 and received his discharge on March 18, 1997. Pursuant to 11 U.S.C. § 727(a)(8), he may not be granted a discharge under § 727 in a case commenced within 6 years before the date of the filing of the next liquidation petition. That 6-year period will expire on November 25, 2002. It is equitable under the circumstances of this case that that period expire before Debtor is permitted to file a petition under the Bankruptcy Code.

IT IS ACCORDINGLY ORDERED, as follows:

- (1) The motion to dismiss is sustained.
- (2) This case is dismissed.
- (3) David Wade Copeland is barred from filing a bankruptcy petition under any chapter of the Bankruptcy Code until November 26, 2002.

Dated this _____ day of July, 2000.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT