

On December 14, 1994 the court entered an order granting the debtors a general discharge of debt.

On March 27, 1995 the court entered an order to show cause why the case should not be dismissed and the discharge revoked. The order indicated the matter would be heard on April 13, 1995 at 10:00 a.m. and identified the court location.

On April 12, 1995 the debtors tendered payment of \$60.00, through Legal Aid, to the Bankruptcy Clerk's Office. Neither the debtors nor their attorney appeared at the April 13, 1995 hearing.

APPLICABLE LAW

11 U.S.C. section 707 provides in part:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including -

....

(2) nonpayment of any fees or charges required under chapter 123 of title 28; ...

Chapter 123 of Title 28 includes section 1930(a)(1) that mandates a filing fee of \$130.00 and paragraph 8 of the Judicial Conference Schedule of Fees that requires a miscellaneous administrative fee of \$30.00.

Federal Rule of Bankruptcy Procedure 1006 provides:

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the prescribed filing fee except as provided in subdivision (b) of this rule.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) Application for Permission to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's

signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) Postponement of Attorney's Fees. The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case.

Finally, Federal Rule Bankruptcy Procedure 9006 provides in part:

(b) ENLARGEMENT.

(1) IN GENERAL. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

. . . .

(3) ENLARGEMENT LIMITED. The court may enlarge the time for taking action under Rules 1006(b)(2) . . . only to the extent and under the conditions stated in those rules.

DISCUSSION

The law is clear. The debtor must pay the full amount of the filing fee in no more than four installments and not later than 120 days after filing the petition. For cause shown, the court may extend the time of any payment up to 180 days after filing the petition. "Where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 109 S. Ct. 1026, 1030, 103 L. Ed. 2d 290 (1989) (quoting Caminetti v. United States, 242 U.S. 470, 485, 37 S. Ct. 192, 61 L. Ed. 442, (1917)).

Dismissal is appropriate where the debtor fails to pay the filing fee before the deadline set by the court and fails to file a timely application for an extension of time or fails to establish excusable neglect for not filing such an application timely. In re Sutton, 43 B.R. 250 (Bankr. D. Conn. 1984). Furthermore, Rule 1006(b)(2) does not allow the court to extend the time for paying the filing fee beyond the 180-day period even if an application is filed within such period. The fact the debtors in this case tendered the balance of the fee on the day before the hearing makes no difference. The maximum time within which they could pay the full fee under any circumstances had expired. Goldrich v. Gart Property Management, Inc. (In re Goldrich), 1992 U.S. Dist. LEXIS 20079; 1992 WL 404725 (E.D.N.Y. December 23, 1992).

ORDER

THEREFORE, IT IS ORDERED that this case is dismissed without prejudice and that the discharge of the debtors entered on December 14, 1994 is revoked.

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court shall return the \$60.00 payment, made on April 12, 1995, to the debtors through Legal Aid.

Dated this 24th day of April, 1995.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE