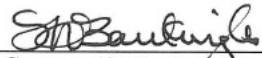




SO ORDERED.

SIGNED this 19th day of April, 2023

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

CLAYTON EDWARD POWERS

Debtor

Case No. 3:23-bk-30371-SHB
Chapter 13

MEMORANDUM AND ORDER

The Court held a hearing on April 19, 2023, pursuant to the Order entered March 23, 2023 (“March 23 Order”) [Doc. 9], 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 180-day bar against the filing of a bankruptcy case by Debtor under any chapter of Title 11 for his repeated and willful failure to abide by orders of the bankruptcy court or otherwise comply with the provisions of the Bankruptcy Code in this and prior cases, including his failure to comply with 11 U.S.C. §§ 109(h), 521(a)(1), and 1321; Rules 1007(b) and 3015(b) of the Federal Rules of Bankruptcy Procedure; E.D. Tenn. LBR 9036-1(b)(1); and the Notice of Additional Documents to Be Filed dated March 9, 2023, by filing the Certificate of Credit Counseling; 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; and Chapter 13 Plan; and Debtor Electronic Noticing Election (DeBN) in this case. Also before the Court was the Trustee's Motion to Dismiss filed by Gwendolyn M. Kerney, Chapter 13 Trustee, on March 10, 2023 [Doc. 6], which was noticed for hearing on April 5, 2023, and continued to April 19, 2023. Debtor did not file a response to March 23 Order or the Chapter 13 Trustee's Motion to Dismiss, nor did he appear at the hearing on April 19, 2023, or file any of the delinquent documents.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed three *pro se* bankruptcy cases since April 2019. He did not pay a filing fee in any of her cases, and there were delinquent filings in each case. The histories of the cases are summarized as follows:

(A) in Case No. 3:19-bk-31047-SHB, filed April 4, 2019, Debtor failed to (i) file the documents required by 11 U.S.C. §§ 521(a)(1), 521(b)(1), and 1321, and Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); (ii) pay the \$313.00 filing fee as directed in an Order entered April 5, 2019; and (iii) appear at the hearing held May 8, 2019, on the Court's show cause order entered April 23, 2019, and the Chapter 13 Trustee's Motion to Dismiss filed April 8, 2019, resulting in dismissal on May 10, 2019;

(B) in Case No. 3:22-bk-31673-SHB, filed November 3, 2022, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by 11 U.S.C. § 109(h); (ii) file the documents required by 11 U.S.C. §§ 521(a)(1), 521(b)(1), and 1321, and Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); and (iii) appear at the hearing held December 14, 2022, on the Court's show cause order entered November 18, 2022, and the

Chapter 13 Trustee's Motion to Dismiss filed November 8, 2022, resulting in dismissal on December 14, 2022; and

(C) in this case, filed March 8, 2023, Debtor failed to (i) obtain the pre-petition credit counseling briefing required by 11 U.S.C. § 109(h); (ii) file the documents required by 11 U.S.C. §§ 521(a)(1), 521(b)(1), and 1321, and Federal Rules of Bankruptcy Procedure 1007(b) and 3015; and (iii) appear at the hearing held April 19, 2023, on the March 23 Order and the Chapter 13 Trustee's Motion to Dismiss filed March 10, 2023, notwithstanding the show-cause directive for dismissal with prejudice and a 180-day bar.

II. CONCLUSIONS OF LAW

Because “[g]ood faith and candor are necessary prerequisites to obtaining a fresh start,” it is implicit that Chapter 7 cases must be filed in good faith. *See In re Eddy*, 288 B.R. 500, 504 (Bankr. E.D. Tenn. 2002) (quoting *Industrial Ins. Servs. v. Zick (In re Zick)*, 931 F.2d 1124, 1129 (6th Cir. 1991)). Courts routinely examine the following factors to determine whether a Chapter 7 case should be dismissed for lack of good faith:

1. The debtor reduced his creditors to a single creditor in the months prior to filing the petition.
2. The debtor failed to make lifestyle adjustments or continued living an expansive or lavish lifestyle.
3. The debtor filed the case in response to a judgment[,], pending litigation, or collection action; there is an intent to avoid a large single debt.
4. The debtor made no effort to repay his debts.
5. The unfairness of the use of Chapter 7.
6. The debtor has sufficient resources to pay his debts.
7. The debtor is paying debts to insiders.
8. The schedules inflate expenses to disguise financial well-being.

9. The debtor transferred assets.
10. The debtor is over-utilizing the protection of the [Bankruptcy] Code to the unconscionable detriment of creditors.
11. The debtor employed a deliberate and persistent pattern of evading a single major creditor.
12. The debtor failed to make candid and full disclosure.
13. The debts are modest in relation to assets and income.
14. There are multiple bankruptcy filings or other procedural “gymnastics.”

Id. at 504-05 (quoting *In re Spagnolia*, 199 B.R. 362, 365 (Bankr. W.D. Ky. 1995)).

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 §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in § 109(g)(1). *Id.* at 737; *see also In re Henderson*, No. 12-50376, 2012 WL 4498887, at *1–2 (Bankr. S.D. Ohio May 4, 2012) (stating that while “only egregious behavior that demonstrates bad faith and prejudices creditors will warrant a permanent bar from refiling,” a debtor who had filed four prior Chapter 13 cases that had been dismissed and had received discharges in two Chapter 7 cases was a serial filer

whose bankruptcy cases “had the effect of staying creditor’s [sic] attempts to collect what they [were] owed repeatedly for almost two decades,” resulting in her being permanently enjoined from filing another case or receiving a discharge of the debts scheduled in that case).

Debtor has a history of multiple filings and dismissals based on his failure to comply with the requirements of the Bankruptcy Code and orders of this court. This is Debtor’s third Chapter 13 case filed since April 2019, and he has failed to obtain (or file certification that he obtained) the required pre-petition credit counseling briefing in the last two cases, failed to pay the filing fee in the first case, failed to file the documents required by § 521(a)(1) in each case, and failed to appear in compliance with show-cause orders and the notices of hearing for the Chapter 13 Trustee’s motions to dismiss in each case. Notably, Debtor did not appear at the April 19, 2023 hearing or otherwise respond to the March 23 Order, notwithstanding that it expressly referenced imposition of a 180-day bar on refiling. A totality of the circumstances evidences that Debtor 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 Rule 52 of the Federal Rules of Civil Procedure, 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; 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 Debtor Electronic Noticing Election required by 11 U.S.C. §§ 109(h), 521(a)(1), and 1321; Rules 1007(b) and 3015(b) of the Federal Rules of Bankruptcy Procedure; E.D. Tenn. LBR 9036-

1(b)(1); and the Notice of Additional Documents to Be Filed dated March 9, 2023, this Chapter 13 bankruptcy case is DISMISSED.

2. Because he has repeatedly and willfully failed to abide by orders of the Court as outlined herein and has failed to appear before the Court as directed, Debtor Clayton Edward Powers is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 180 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

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