



SO ORDERED.

SIGNED this 1st day of November, 2023

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


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

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

In re

MELISSA A. CRISP
aka MELISSA A. CALDWELL

Case No. 3:23-bk-31643-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

The Court held a hearing on November 1, 2023, pursuant to the Order entered October 5, 2023 (“October 5 Order”) [Doc. 14], 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 her 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 her failure to comply with 11 U.S.C. §§ 109(h), 521(a)(1), and 1321; Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); and the Notice of Additional Documents to Be Filed dated September 19, 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 in this case. Also before the Court was the Motion by Chapter 13 Trustee to Dismiss Case With Prejudice (“Motion to Dismiss”) filed by Debra L. Miller, Chapter 13 Trustee, on September 20, 2023 [Doc. 9], which was noticed for hearing on October 18, 2023, and continued to November 1, 2023, by the October 5 Order. Debtor did not file a response to either the October 5 Order or the Motion to Dismiss, did not appear at the hearing on November 1, 2023, and did not file any of the delinquent documents.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed two *pro se* bankruptcy cases within the 180 days, each with delinquent document filings and noncompliance with orders of this Court. The histories of the cases are summarized as follows:

(A) in Case No. 3:23-bk-31002-SHB, filed on June 2, 2023, Debtor failed to (1) file the Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period; and Chapter 13 Plan as required by 11 U.S.C. §§ 521(a)(1) and 1321; Rules 1007(b) and 3015(b); the Notice of Additional Documents to Be Filed dated June 6, 2023; and the Order entered June 20, 2023, extending the time to file the delinquent documents; and (2) appear at the hearing held on July 19, 2023, as required by the Court’s Order entered on June 26, 2023, directing Debtor to appear and show cause why the case should not be dismissed, and the notice of hearing accompanying the Chapter 13 Trustee’s Motion to Dismiss filed on June 28, 2023, resulting in dismissal of the case by an Order entered on July 19, 2023; and

(B) in this case, filed on September 18, 2023, Debtor failed to file the 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 (DeBN) required by 11 U.S.C. §§ 521(b)(1) and 1321; Rules 1007(b) and 3015(b); E.D. Tenn. LBR 9036-1(b)(1); and the Notice of Additional Documents to Be Filed; failed to appear at the November 1 hearing as directed by the October 5 Order; and failed to appear at the hearing noticed in the Motion to Dismiss as continued by the October 5 Order.

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 11 U.S.C. §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in 11 U.S.C. § 109(g)(1). *Id.* at 737.

In a period of 109 days, Debtor filed two *pro se* Chapter 13 bankruptcy petitions; however, in neither case did she file the required statements and schedules nor did she appear before the Court in response to its orders. In this case, Debtor also failed to appear in compliance with the notice of hearing on the Motion to Dismiss filed by the Chapter 13 Trustee. Furthermore, Debtor

did not appear at the hearing held November 1, 2023, or otherwise respond to the October 5 Order, notwithstanding that it expressly referenced imposition of a 180-day bar on refiling. A totality of the circumstances evidences that Debtor, who has repeatedly and willfully failed to comply with orders of this Court and the Bankruptcy Code, 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 (1) file the 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. §§ 521(a)(1) and 1321; Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); E.D. Tenn. LBR 9036-1(b)(1); and the Notice of Additional Documents to Be Filed dated September 19, 2023; and (2) appear at the hearing held November 1, 2023, this Chapter 13 bankruptcy case is DISMISSED.

2. Additionally, the Motion to Dismiss filed by the Chapter 13 Trustee on September 20, 2023 [Doc. 9], is GRANTED.

3. Because she has repeatedly and willfully failed to abide by orders of the Court as outlined herein and failed to appear before the Court as directed, Melissa A. Crisp 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).

###