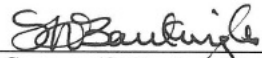




SO ORDERED.

SIGNED this 30th day of December, 2021

**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

FRANK TILTON BROCK

Case No. 3:21-bk-31755-SHB
Chapter 7

Debtor

MEMORANDUM AND ORDER

On December 30, 2021, the Court held a hearing pursuant to the Order entered November 30, 2021 (“November 30 Order”) [Doc. 13], 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. § 521(a)(1), Rule 1007(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 November 9, 2021, by filing the Statement Regarding Payment Advices; Schedule E/F; Summary of Assets and Liabilities and Certain Statistical Information;

Chapter 7 Statement of Current Monthly Income; and the Debtor Electronic Noticing Election (DeBN) in this case. Debtor did not file a response to November 30 Order, nor did he appear at the hearing on December 30, 2021.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed three bankruptcy cases since September 14, 2021. He did not pay a filing fee in either the second or third case, and there were delinquent filings in each case. The histories of the cases are summarized as follows:

(A) in Case No. 21-30632-grs, filed in the Eastern District of Kentucky on September 14, 2021, Debtor did not comply with an Order of the Court and did not file the Certificate of Credit Counseling; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Statement of Current Monthly Income; and a sworn declaration regarding the initial list of creditors, resulting in dismissal on October 5, 2021;

(B) in Case No. 21-60685-grs, filed in the Eastern District of Kentucky on October 12, 2021, Debtor did not comply with Orders of the Court and did not file a Declaration About Schedules and Chapter 13 Statement of Current Monthly Income; did not produce original signatures for the Statement About Social Security Numbers, Chapter 13 Plan, and Certificate of Service of Chapter 13 Plan; and did not pay the \$313.00 filing fee or the \$25.00 conversion fee, resulting in dismissal on November 1, 2021; and

(C) in this case, filed *pro se* on November 8, 2021, Debtor (i) failed to file the Statement Regarding Payment Advices; Schedule E/F; Summary of Assets and Liabilities and Certain Statistical Information; Chapter 7 Statement of Current Monthly Income; and the DeBN required by 11 U.S.C. § 521(a)(1), Federal Rule of Bankruptcy Procedure

1007(b), and E.D. Tenn. LBR 9036-1(b)(1); (ii) failed to pay the first installment of the filing fee on or before the December 10, 2021 deadline as directed in the Order Approving Payment of Filing Fee in Installments entered on November 10, 2021 [Doc. 7]; and (iii) failed to submit an executed page 9 of the Voluntary Petition and/or to provide a telephone number and email address to the Clerk's office as requested in the Memorandum from the Deputy Clerk dated November 10, 2021 [Doc. 8].

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 and other bankruptcy courts. This is Debtor’s third case filed within three months – beginning on September 14, 2021 – and he has failed to file documents required by § 521(i)(1) in each case. Debtor also did not appear at the December 30, 2021 hearing, notwithstanding that the November 30 Order 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 Statement Regarding Payment Advices; Schedule E/F; Summary of Assets and Liabilities and Certain Statistical Information; Chapter 7 Statement of Current Monthly Income; and the DeBN required by 11 U.S.C. § 521(a)(1), Federal Rule of Bankruptcy Procedure 1007(b), and E.D. Tenn. LBR 9036-1(b)(1), this Chapter 7 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 Frank Tilton Brock 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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