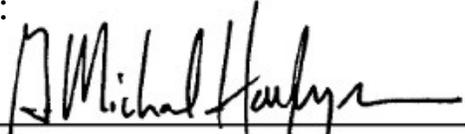




THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: June 28, 2016


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

James Burke,

Case No. 16-23732-GMH

Debtor.

Chapter 13

ORDER DENYING DEBTOR'S MOTION TO VACATE DISMISSAL

The debtor filed this case on April 19, 2016. On June 10, 2016, the debtor's case was automatically dismissed pursuant to 11 U.S.C. §521(i) because the debtor failed to file a statement of financial affairs within 45 days of the filing of his bankruptcy petition.

The debtor, through his counsel, filed a motion to vacate the dismissal on June 13, 2016. He argues that the dismissal should be vacated because the "Order: Possible Future Dismissal of the Case", dated April 19, 2016, did not tell the debtor that he had not filed his statement of financial affairs. Debtor's counsel says that he "relied upon the Order and notice regarding deficiency deadline in determining which documents needed to be filed. A Statement of Financial Affairs was not filed because it was not listed as a required document." CM-ECF Doc. No. 17.

This is all irrelevant. Section 521(i)(1) of title 11 provides that the case “shall be automatically dismissed” on the 46th day after the date of the filing of the petition if the debtor has not filed “all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition.” Section 521(a)(1)(B)(iii) requires the debtor to file “a statement of the debtor’s financial affairs.” The debtor failed to file a statement of financial affairs within 45 days after the date he filed his petition. The case was, therefore, automatically dismissed by operation of §521(i)(1). The statute does not allow the court to expand the time to file the necessary information unless the debtor makes a request during the 45-day period. 11 U.S.C. §521(i)(3).

The debtor, through counsel, complains that the clerk didn’t warn the debtor that he hadn’t filed the statement of financial affairs. Section 521(i) itself affords all the notice of the “automatically dismissed” provision that is due. The debtor and his counsel are responsible for knowing the law. And they certainly should know whether the debtor filed his statement of financial affairs.

The court issues orders on possible future dismissal as a courtesy. The duty to comply with §521 is the debtor’s. The lack of a court order identifying the debtor’s failure to comply with that duty has no bearing on Congress’s direction that a case is automatically dismissed if the debtor does not cure the deficiency or obtain an extension within 45 days of commencing the case.

Under these circumstances, the court has no authority to vacate the dismissal. Accordingly, the debtor’s motion to vacate the dismissal of his case is DENIED.

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