

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



DATED: August 17, 2018


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

Athena L. Salinas,

Debtor.

Case No. 18-25509-gmh

Chapter 13

ORDER DENYING DEBTOR'S MOTION TO RECONSIDER DISMISSAL

On June 4, 2018, the court entered an order requiring the debtor to file, among other things, Local Form 1007 Payment Advice Cover Sheet and any applicable pay advices within 14 days. CM-ECF, Doc. No. 3. The order stated that additional deadlines applied and that failure to comply with those deadlines could result in the automatic dismissal of the debtor's bankruptcy case. *Id.*

The debtor failed to file payment advices before the 45-day deadline set by 11 U.S.C. §521(i), which fell on July 16, 2018.

On July 23, 2018, the court entered an order requiring the debtor to show cause why this case was not automatically dismissed on July 17 for failing to file payment advices or other

evidence of payment by the 45-day deadline. See 11 U.S.C. §§521(a)(1)(B)(iv), 521(i).

On July 24, 2018, eight days after the expiration of the §521(i) deadline, the debtor filed a payment advice cover sheet and payment advices for income she received during the 60-day period before she filed this case. Recognizing that the debtor had payment advices that required filing under §521(a)(1)(B)(iv), but were not filed until after the 45-day deadline expired, the court entered an order on July 26 observing that this case had been automatically dismissed on July 17, 2018.

On August 7, 2018, debtor's counsel filed a motion for the court to reconsider its dismissal order. In the motion, debtor's counsel provides a detailed explanation of the circumstances that led to the payment advices being filed after the 45-day deadline.

According to counsel, the debtor approached him during the late stages of a foreclosure action related to the debtor's home. The debtor reportedly did not have all of the documents she needed to make a complete bankruptcy filing. She and her counsel decided to make a minimal bankruptcy filing on June 1, 2018, in order to stay a June 4 hearing on confirmation of the sheriff's sale of the debtor's home. On June 14, counsel's office staff filed the remaining bankruptcy schedules and a chapter 13 plan, but inadvertently failed to file the debtor's payment advices. Counsel points out that the docket incorrectly indicated that the payment advices had been filed, but a look at the June 14 submissions shows that the debtor's payment advices were missing. See CM-ECF, Doc. No. 8. Debtor's counsel further explains that he was on vacation when the court entered its show cause order on July 23, 2018. Without consulting him, his office staff immediately responded to the court's order by filing the missing payment advices, and calendared an August 7, 2018 response deadline to the show cause order.

Counsel stresses the debtor's payment advices were in his possession before the 45-day deadline expired and was unaware that they had not been filed until the court's July 23, 2018 order to show cause. Furthermore, due to an apparent mistake in calendaring, counsel inadvertently neglected to respond to the show cause order at the time his office filed the debtor's payment advices. Because of these alleged oversights, counsel asks the court to reconsider the dismissal order.

The court appreciates counsel's thorough recitation of the events leading to the failure to timely file the debtor's payment advices. Nevertheless, the Bankruptcy Code requires denial of the debtor's reconsideration motion.

Section 521(a)(1) of the Bankruptcy Code requires debtors to file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor." 11 U.S.C. §521(a)(1)(B)(iv). Section 521(i)(1) provides that a debtor's case is "automatically" dismissed if the debtor fails to file all of the information required under §521(a)(1) within 45 days after the case is filed. The Code further requires the debtor to file any request for an extension of time before the 45-day period expires. 11 U.S.C. §521(i)(3).

The debtor filed this case on June 1, 2018. Day 45 was July 16, 2018. The case terminated by operation of law when the debtor did not file payment advices within the 45-day period. Because the 45-day period has already expired, the court lacks authority to expand the time to file the payment advices. Cf. Fed. R. Bankr. P. 9006(b) (authorizing court to expand the time for deadlines set only by most bankruptcy rules or order of court).

"Because [11 U.S.C. §521(i)(1)] allows no discretion in granting dismissal, it similarly

allows no opportunity to reinstate a case after it has been dismissed” for failing to file all of the information required by §521(a)(1). *In re Bonner*, 374 B.R. 62, 65 (Bankr. W.D.N.Y. 2007). Simply put, the court lacks the authority to vacate a dismissal of a case automatically dismissed by §521(i) unless the debtor demonstrates that the court erred in concluding that the statute’s dismissal provision was triggered. The debtor here does not so argue: she had pay advices that §521(a) required filing, and she did not actually file them in time to avoid dismissal by operation of §521(i).

Therefore, **IT IS ORDERED** that the debtor’s request for the court to reconsider its dismissal order is **denied**.

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