



SO ORDERED

A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: July 1, 2019

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

BETTY JEAN THOMAS,

CASE NO. 18-00770-NPO

DEBTOR.

CHAPTER 7

ORDER ON MOTION TO REOPEN CASE

This matter came before the Court on the Motion to Reopen Chapter 7 Bankruptcy (the "Motion") (Dkt. 48) filed by the debtor, Betty Jean Thomas (the "Debtor"), in the above-styled chapter 7 bankruptcy case (the "Bankruptcy Case"). After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Notice of the Motion was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code on February 28, 2018. (Dkt. 1). Shortly thereafter, the Clerk of the

Bankruptcy Court (the “Clerk”) issued a notice that the first meeting of creditors under 11 U.S.C. § 341 would be held on April 27, 2018. (Dkt. 8) Under 11 U.S.C. § 727(a)(11) and Rules 1007(b)(7)(A), 1007(c), and 4004(c)(1)(H) of the Federal Rules of Bankruptcy Procedure, the Debtor was required to file Official Form 423, Certification About a Financial Management Course (the “Certification”) “within 60 days after the first date set for the meeting of creditors” or by June 26, 2018.

2. On June 11, 2018, the Clerk sent the Debtor and counsel for the Debtor the Notice of Requirement to File Statement of Completion of a Personal Financial Management Course (Dkt. 38), reminding the Debtor that her failure to file the Certification would result in the Bankruptcy Case being closed without a discharge. The Debtor failed to file the Certification by the deadline of June 26, 2018 or at any time thereafter.

3. After the Bankruptcy Case had been fully administered, the Court entered the Final Decree/Order Closing Case (Dkt. 43) on July 12, 2018 at 11:32 a.m. Because the Debtor failed to file the Certification by the original deadline, the Bankruptcy Case was closed without a discharge. The Clerk mailed the Notice of Case Closing Without Entry of Discharge (Dkt. 44) to the Debtor, Debtor’s counsel, and all of the Debtor’s creditors that same day.

4. On July 13, 2018, after the Bankruptcy Case was closed, the Debtor filed the Certificate of Debtor Education (the “Education Certificate”) (Dkt. 45), indicating that the Debtor completed the personal financial management course on July 12, 2018 at 4:42 p.m. The Education Certificate issued by the Debt Education and Certification Foundation is not the

Certification on Official Form 423 prescribed by Rule 1007(b)(7)(A).¹

5. The Debtor filed the Motion on May 16, 2019, asking the Court to reopen the Bankruptcy Case. In the Motion, the Debtor alleges that she “was able to complete and file the Financial Management Course one day after the case was closed.” (Dkt. 48). The Motion provides no explanation why the Debtor failed to complete the personal financial management course and file the Certification in a timely manner. Moreover, the Motion does not include an express request to extend the time to file the Certification, *nunc pro tunc*, demonstrating that she completed the personal financial management course on July 12, 2018. The Debtor alleges as a separate ground for reopening the Bankruptcy Case that she “has knowledge of additional creditors’ claims and would like to have all of her debts discharged in this case.” (Dkt. 48).

6. The Certificate of Service signed by counsel for the Debtor indicates that the Motion was served on the U.S. Trustee, the chapter 7 standing trustee, and “[a]ll creditors listed on matrix.” (Dkt. 2 at 2). No objection to the Motion was filed.

Discussion

A closed bankruptcy case may be reopened pursuant to § 350(b)² “to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. § 350(b). Section 350(b) grants the Court broad discretion to reopen a closed case when a debtor can show cause as to why the bankruptcy case should be reopened. *Citizens Bank & Tr. Co. v. Case (In re Case)*, 937 F.2d

¹ Unless the provider of the course notifies the court that a debtor has taken the personal financial management course after filing his bankruptcy case, the debtor is responsible for filing the certification “prepared as prescribed by the appropriate Official Form.” FED. R. BANKR. P. 1007(b)(7).

² All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code, and all rules refer to the Federal Rules of Bankruptcy Procedure.

1014, 1018 (5th Cir. 1991); 3 COLLIER ON BANKRUPTCY ¶ 350.03 (16th ed. 2019). Whether a court should grant a motion to reopen depends upon the circumstances of the individual case. *Id.*

A court's power to reopen a case is not limited by a certain time period under § 350(b) or Rule 5010. However, "[t]he longer the time between the closing of the estate and the motion to reopen . . . the more compelling the reason for reopening the estate should be." *In re Case*, 937 F.2d at 1018.

Rule 9006(b)(3) states that "the court may enlarge the time to file the statement required under Rule 1007(b)(7) [the Certification] . . . only to the extent and under the conditions stated in Rule 1007(c)." Rule 1007(c), in turn, permits a bankruptcy court "at any time and in its discretion, [to] enlarge the time to file the statement required by subdivision (b)(7) [of Bankruptcy Rule 1007]." FED. R. BANKR. P. 1007(c). Rule 1007(c) further provides that an extension of time to file the Certification may be granted "only on motion for cause shown." *Id.*

The Court previously has denied motions to reopen where the delay in filing the required certification ranged from fifteen (15) months to five (5) years. In *In re Toole*, No. 12-02273 (Dkt. 71), slip op. (Bankr. S.D. Miss. June 12, 2019), for example, the debtor waited over one (1) year before attempting to reopen her bankruptcy case. The debtor in *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. (Bankr. S.D. Miss. July 2, 2014), waited three (3) years and "fail[ed] to provide any explanation for the length of the delay in completing the instructional course." *Id.* at 3. Similarly, in *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. (Bankr. S.D. Miss. June 17, 2014), this Court denied a motion to reopen to allow a debtor to file the certification five (5) years

after the bankruptcy case was closed.³ See also *In re Whitaker*, 574 B.R. 819, 824 (Bankr. E.D. Mich. 2017) (denying motion to reopen to file the certification where the debtor waited almost one (1) year after the case was closed).

This Bankruptcy Case, however, requires further scrutiny before the Court can rule on the Motion. Pursuant to the Education Certificate, the Debtor completed the personal financial management course approximately five (5) hours after the Bankruptcy Case was closed. Why then did the Debtor wait nearly one (1)-year before filing the Motion? Does responsibility for the delay rest on the Debtor, the Debtor's counsel, or both? Is there a risk of prejudice to creditors if the Bankruptcy Case is reopened? These questions are not addressed adequately in the Motion.

The Motion also mentions that the Debtor "has knowledge of additional creditors' claims." This allegation suggests that the Debtor seeks to reopen the Bankruptcy Case not only to file the Certification but also to amend her bankruptcy schedules to bring certain unscheduled debts within the scope of her discharge. The two-page Motion does not identify the omitted creditors or provide any other facts necessary for the Court to apply the test set forth by the Fifth Circuit Court of Appeals in *Stone v. Caplan (In re Stone)*, 10 F.3d 285 (5th Cir. 1994). The Court previously denied a motion to reopen under similar facts in *In re Spann*, Case No. 18-02594 (Dkt. 29), slip op. (Bankr. S.D. Miss. June 18, 2019).

Given the unusual facts that the Debtor completed the personal financial management

³ In *In re Ruckes*, the Court had granted a previous motion to reopen the bankruptcy case in order to prevent the disclosure of confidential information contained in a proof of claim. *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. at 2. After such relief was obtained, the bankruptcy case was closed again. *Id.* at 4. In denying the debtor's second motion to reopen, the Court considered the amount of time that had elapsed since the bankruptcy case was closed the first time. *Id.*

course only hours after the Bankruptcy Case was closed and that the Debtor failed to plead the facts necessary for the Court to apply the *Stone* test, the Court will allow the Debtor fourteen (14) days: (1) to file an amended motion to reopen that addresses the “excusable neglect” of the Debtor and/or Debtor’s counsel and the prejudice to creditors; and (2) to provide the facts necessary to support an amendment of the Debtor’s bankruptcy schedules to add additional creditors.

IT IS, THEREFORE, ORDERED that the Debtor shall file an amended motion to reopen that addresses the issues raised in this Order, including the “excusable neglect” of the Debtor and/or Debtor’s counsel, the prejudice to creditors, and the facts necessary to support an amendment of the Debtor’s bankruptcy schedules within fourteen (14) days of this Order. The Debtor’s failure to file an amended motion to reopen by the deadline will result in the denial of the Motion without further notice or hearing.

##END OF ORDER##