



**SO ORDERED,**

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: August 27, 2019**

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

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

**IN RE:**

**MARRIEL C. HARDY,**

**CASE NO. 18-03655-NPO**

**DEBTOR.**

**CHAPTER 7**

**ORDER DENYING MOTION TO REOPEN CASE**

This matter came before the Court for hearing on August 26, 2019 (the “Hearing”) on the Motion to Reopen Case (the “Motion”) (Dkt. 19) filed by the debtor, Marriel C. Hardy (the “Debtor”), in the above-styled chapter 7 bankruptcy case (the “Bankruptcy Case”). At the Hearing, Adam Sanford represented the Debtor. 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 September 24, 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 November 1, 2018 and stating that the “Last day to file financial management statement for Debtor is 12/31/2018” (the “First Notice”) (Dkt. 9). 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 December 31, 2018.

2. On December 17, 2018, the Clerk sent the Debtor the Notice of Requirement to File Statement of Completion of a Personal Financial Management Course (the “Second Notice”) (Dkt. 12) reminding him that his 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 December 31, 2018.

3. After the Bankruptcy Case had been fully administered, the Court entered the Final Decree/Order Closing Case (Dkt. 14) on January 15, 2019. Because the Debtor failed to file the Certification by the original deadline, the Bankruptcy Case was closed without a discharge. The Clerk mailed the Debtor the Notice of Case Closing Without Entry of Discharge (the “Third Notice”) (Dkt. 15) on January 17, 2019.

4. The Debtor filed the Motion on July 8, 2019, asking the Court to reopen the Bankruptcy Case because “he has [since] completed the required finance management course and wishes to reopen his case so that he may receive his discharge” (Dkt. 19). The Motion provides no valid excuse why the Debtor failed to complete the personal financial management course (the

“Course”) 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 he completed the Course. No objection to the Motion was filed.

5. As of the Hearing, over seven months after the Bankruptcy Case was closed, the Debtor had not filed the Certification indicating that the Debtor completed the Course and when the Debtor took the Course.

### **Discussion**

A closed bankruptcy case may be reopened pursuant to § 350(b)<sup>1</sup> “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 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. Additionally, the doctrine of laches may apply to bar the reopening of a bankruptcy case that has been closed for a significant amount of time. 3 COLLIER ON BANKRUPTCY ¶ 350.03[6].

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<sup>1</sup> 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.

**A. § 350(b)**

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 debtor’s delay in filing the required certification extended beyond the ordered deadline. In *In re Toole*, No. 12-02273-NPO (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. In *In re Ruckes*, No. 08-02611-NPO (Dkt. 79), slip op. (Bankr. S.D. Miss. June 17, 2014), the debtor waited five (5) years to file the certification.<sup>2</sup> It is within the Court’s discretion to grant a motion to reopen a case after the deadline.

The Debtor now seeks to reopen the Bankruptcy Case but does not explain why he failed to take any action before the Bankruptcy Case was closed after he received the First Notice and

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<sup>2</sup> In *In re Ruckes*, the Court 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.*

Second Notice and does not explain why he waited five months after receiving the Third Notice to file the Motion. *See 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). At the Hearing, the Debtor’s only explanation was that “[he] was going through a divorce, [his] divorce decree was not being honored and [he] was battling that case, [he] moved to a new town, [he] started in a leadership position,” and he did not realize “time had passed” (Test. of Debtor at 1:37.02-1:37.45 (Aug. 26, 2019)).<sup>3</sup> The Debtor testified he “did not realize” time had passed to complete the Course until after he received the Third Notice (Test. of Debtor at 1:37.32-1:37.52 (Aug. 26, 2019)). He further testified that the Course took approximately one (1) hour to complete (Test. of Debtor at 1:38.07–1:38.19 (Aug. 26, 2019)).

In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act (the “Act”) to restore “financial responsibility and integrity to the bankruptcy system and ensure that the system is fair for both creditors and debtors.” H.R. REP. NO. 109-31(I) (2005). To that end, the Act requires that debtors receive financial management training as a condition to obtaining a chapter 7 discharge. *See* 11 U.S.C. § 727(a)(11). But “[a]llowing a debtor to take the financial management course years after its target completion provides no educational benefit to the debtor for the intervening years and denigrates its purpose. Moreover, it . . . is unfair to creditors to allow a debtor to avoid the responsibilities established by the bankruptcy code and rules, only to later want to fulfill those requirements when faced with a resulting unpleasantness.” *In re Heinbuch*, No. 06-60670, 2016 WL 1417913, at \*3 (Bankr. N.D. Ohio Apr. 7, 2016). The Court finds, under

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<sup>3</sup> The Hearing was not transcribed. Citations to the Debtor’s testimony are to the timestamp of the audio recording.

the particular facts of the Bankruptcy Case, that the Debtor's inexcusable delay in completing the course and filing the Certification prohibits the Debtor from showing cause to reopen the Bankruptcy Case under § 350(b).

**B. Laches**

As stated previously, the doctrine of laches also may bar the reopening of a bankruptcy case. The doctrine of laches requires proof of two (2) elements: "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282 (1961) (citations omitted). "The doctrine of laches is important in bankruptcy proceedings because 'a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period of time.'" *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. at 4 (quoting *Katchen v. Landy*, 382 U.S. 323, 328 (1966)). In the Bankruptcy Case, the first element is met because the Debtor made no effort to file the Certification in compliance with the Clerk's Notice. The Debtor also failed to offer any convincing explanation for his failure to comply and complete the course that took "maybe an hour" (Test. of Debtor at 1:38.07–1:38.19 (Aug. 26, 2019)). The second element is also met because, under the facts of the Bankruptcy Case where creditors have relied in good faith on the administration and closing of the Bankruptcy Case without a discharge for approximately seven (7) months, "it would be prejudicial and unfair to allow the Debtor to obtain a discharge at this late date." *In re Lancellotti*, No. 10-04152-NPO (Dkt. 65), slip op. at 4.

**Conclusion**

Given that the First Notice informed the Debtor that he was required to file the Certification to receive a discharge, his failure to comply with the First Notice and Second Notice, and the delay

after the closing of the Bankruptcy Case and receiving the Third Notice before the Debtor filed the Motion, the Court finds that the Debtor has not met his burden to show cause why the Bankruptcy Case should be reopened pursuant to § 350(b), and, in addition, finds that the doctrine of laches bars the reopening of the Bankruptcy Case. Accordingly, the Court finds that the Motion should be denied.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##