

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re: John P. Hemphill,

Case No. 17-20109-svk
(Chapter 13)

Debtor.

MOTION TO DISMISS WITH PREJUDICE

Patrick S. Layng, United States Trustee, by Attorney Amy J. Ginsberg, moves this Court to dismiss John T. Hemphill's chapter 13 case, with prejudice, pursuant to 11 U.S.C. §§ 349 and 1307(c), because he made false statements in his Schedules and Statement of Financial Affairs and failed to obey the Court's order to appear for examination and produce documents. In support of this Motion, the United States Trustee states:

Jurisdiction and Standing

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § 157 and § 1334.
2. The United States Trustee has standing to file this motion pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. § 307. This is a core proceeding. This motion arises under 11 U.S.C. § 1307(c), § 349 and Rule 2002(a)(4), Fed. R. Bankr. P.

Hemphill's Schedules and Statement of Financial Affairs

3. On January 7, 2017, John P. Hemphill (the Debtor) filed his voluntary petition under Chapter 13 of the Bankruptcy Code.

Amy J. Ginsberg
Attorney for the United States Trustee
Office of the United States Trustee
517 E. Wisconsin Avenue, Suite 430
Milwaukee, WI 53202
414.297.4499 Fax 414.297.4478

4. In his schedules, the Debtor disclosed that he had an account at US Bank with a \$1,000 balance, and he checked the box indicating that he had no cash. The Debtor also scheduled a defamation claim against Fox News. *See* Docket Entry #1, Schedule B.

5. On Schedule I, the Debtor disclosed that he received \$4,400 from pensions and retirement income and \$500 from odd jobs. *See* Docket Entry #1, Schedule I.

6. In his Statement of Financial Affairs, the Debtor disclosed that in 2016 he received \$52,800 from Social Security disability. *See* Docket Entry #1, SOFA, Question 5.

7. In response to SOFA Question 22, "Have you stored property . . . in a place other than your home within 1 year before you filed for bankruptcy?" the Debtor checked the "No" box. *See* Docket Entry #1, SOFA, p. 37.

The Debtor Invoked the Fifth Amendment, Refusing to Testify
About Sources of Income and Assets

8. On February 16, 2017, attorney for the chapter 13 trustee, Rebecca Quiroz, conducted the § 341 meeting.

9. At the § 341 meeting, the Debtor testified that his bankruptcy schedules accurately reflected all of his assets, everything he owned, everyone to whom he owed money and his usual monthly income. He testified that he did not need to make any amendments or corrections. The Debtor testified that he understood that he signed his bankruptcy documents under oath, under penalty of perjury and that they were true, correct and complete.

10. At the § 341 meeting, the Debtor testified that he did not receive any pension or retirement payments, only that he received Social Security Disability payments of \$1,843 each month.

11. When asked about additional income to reach the \$4,900 he disclosed on Schedule I, the Debtor testified that he had about \$30,000 remaining from a lawsuit settlement.

He testified that his family held the \$30,000. When asked for the names of the relatives holding the lawsuit settlement funds, the Debtor refused to testify and invoked the Fifth Amendment.

12. When asked whether a lawsuit was actually filed, the Debtor invoked the Fifth Amendment and refused to testify.

13. Similarly, when asked the basis of his defamation claim against Fox News, the Debtor invoked the Fifth Amendment and refused to testify.

14. Upon information and belief, the Debtor failed to schedule a criminal fine in the amount of \$4,911. *See Wisconsin v. John Hemphill*, Case No. 12-CF-2325 (Wis. Cir. Ct. June 7, 2016) (CCAP).

15. With the agreement of the Debtor's counsel, Attorney William H. Green, a Rule 2004 exam was scheduled for March 14, 2017. On March 10, 2017, the Court entered the order for the Debtor to appear and produce documents. *See* Docket Entry #16.

16. On March 13, 2017, Attorney Green notified the United States Trustee that the Debtor would not appear for his Rule 2004 examination.

17. Also on March 13, 2017, the Debtor filed a Notice of Dismissal of this case. *See* Docket Entry #18.

18. The Debtor did not appear for his Rule 2004 examination on March 14, 2017 or produce any of the documents.

19. This is the Debtor's third bankruptcy case. Previously, the Debtor filed a chapter 13 case in May 2007, which was converted to chapter 7, and he received a discharge on June 2, 2010. *See In re John P. and Yasmo Hemphill*, Case No. 07-23470-jes (Bankr. E. D. Wis. filed May 7, 2007). A few months after receiving his chapter 7 discharge in 2007, the Debtor filed a chapter 13 case in November 2010; the court dismissed this case on November 5, 2012. *See In re John P. and Yasmo Hemphill*, Case 10-37854-pp (Bankr. E. D. Wis. 2010).

Law and Argument

20. The Court may dismiss a chapter 13 case for cause. 11 U.S.C. § 1037(c). *In re Love*, 957 F.2d 1350, 1354 (7th Cir. 1992). The list of causes in § 1307(c) are a non-exclusive list. *Love* at 1357.

21. For cause, a bankruptcy case maybe dismissed with prejudice. 11 U.S.C. § 349(a). Cause is not defined in 11 U.S.C. § 349(a). A finding of bad faith based upon egregious behavior or abuse of the bankruptcy process constitutes cause for dismissal with prejudice. *Leavitt v. Soto (In re Soto)*, 171 F.3d 1219, 1223 (9th Cir. 1999); *In re Hall*, 258 B.R. 908, 910 (Bankr. N. D. Ind. 2001); *In re Spectee Group, Inc.* 185, B.R. 146, 156 (Bankr. S. D. N. Y. 1995).

22. Dismissal with prejudice is appropriate when a debtor makes false statements to the court. *In re Lehr*, 479 B.R. 90, 97 (Bankr. N. D. Cal. 2012). Failure to disclose assets in a debtor's schedules also provides cause for dismissal with prejudice. Concealing assets, concealing information from the court amounts to egregious behavior sufficient to dismiss a bankruptcy case with prejudice. *McCarthy v. Martin (In re Martin)*, 2016 Bankr. LEXIS 4238*36 (9th Cir. BAP 2016); *Lehr* at 99.

23. The Debtor signed his Schedules under penalty of perjury. At the § 341 meeting, he admitted that he failed to disclose at least \$30,000 in cash assets and refused to provide any additional information about this cash, e.g., who was holding it for him, where the cash was located and whether he had any other assets to explain the difference between the \$4,900 in income disclosed on Schedule I and the \$1,823 he receives from Social Security.

24. The Debtor withheld material information about his assets and income from the trustee, creditors and the Court. This is sufficiently egregious conduct for the Court to dismiss this case with prejudice.

25. In addition, the Debtor's voluntary dismissal of his case in lieu of providing information about his income and assets, combined with his two prior cases, demonstrate cause for dismissal with prejudice.

WHEREFORE, the United States Trustee requests that the Court enter an order dismissing this case, with prejudice, and for such other relief as is appropriate. The United States Trustee does not intend to file a separate brief in connection with this pleading, but reserves the right to file a responsive brief if necessary.

Dated: March 15, 2017

PATRICK S. LAYNG
United States Trustee

**AMY
GINSBERG**

Digitally signed by AMY GINSBERG
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AMY J. GINSBERG
Attorney for the United States Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

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Debtor.

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2017, I electronically filed the **UNITED STATES TRUSTEE'S MOTION TO DISMISS WITH PREJUDICE** with the Clerk of the Bankruptcy Court using the ECF system which sent notification of such filing to the following:

Trustee Rebecca Garcia
Attorney Will Green

and further, that I mailed such document, via first-class U.S. mail, to the following party:

John P. Hemphill
1425 S. 58th Street
West Allis, WI 53214



Mary Jo Malone
Paralegal Specialist
Office of the United States Trustee