SO ORDERED.

SIGNED this 8th day of January, 2015.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Sherry Barnes Rising,	)	Case No. 07-50123
	)	
Debtor.	)	Chapter 13
	)	

ORDER GRANTING MOTION TO REOPEN

THIS MATTER came before the Court for hearing on January 7, 2015, after due and proper notice, upon the Debtor's Motion to Reopen the case for the purpose of filing a motion for entry of discharge. James Tennant, counsel for Sherry Barnes Rising ("the Debtor"); Kathryn L. Bringle, Chapter 13 trustee; and Robert E. Price, Jr., counsel for the Bankruptcy Administrator, appeared at the hearing.

BACKGROUND

The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on January 26, 2007. At the time of filing, the Debtor owned real property located at 103 Meadow Ridge Drive in Thomasville, North Carolina, with a value listed on Schedule A of $120,290.00. The real property was encumbered by first and second deeds of trust in favor of Wells Fargo

Financial Bank ("Wells Fargo"). The Debtor's Chapter 13 plan, confirmed in May 2007, provided for ongoing mortgage payments to be made by the Chapter 13 trustee, along with payment of the mortgage arrearage claim. The plan reflected that the balance owing on Wells Fargo's first deed of trust was $127,963.00. Wells Fargo's claim on its second deed of trust, which had a balance of $10,508.61, was classified as unsecured, as there was no value in the Debtor's residence above the first deed of trust. The plan provided that successful completion would constitute full and final satisfaction of Wells Fargo's second deed of trust. The plan authorized the Debtor, if necessary upon the plan's completion, to record a certified copy of the order confirming the plan along with a certified copy of the Court's discharge order, and it provided that recordation of these documents would constitute full satisfaction of the second deed of trust. A separate order valuing the real property under § 506(a) of the Bankruptcy Code was entered shortly after confirmation of the plan.

Over the course of the next four years, the Debtor completed all payments required under her plan and filed her certificate of completion of financial management course as required by § 1328. On January 26, 2011, the Court entered an order deeming the account on Wells Fargo's first deed of trust current. The Chapter 13 trustee filed a notice of plan completion the following month. This notice was mailed to the Debtor and also mailed and sent electronically to Mr. Tennant.

On March 31, 2011, the clerk's office issued a notice of requirement of motion for entry of discharge and certification of plan completion. This notice was mailed to the Debtor and sent to Mr. Tennant electronically. It explained that in order for a debtor to receive a discharge, the debtor was required to file a motion for entry of discharge and certification of plan completion and to send a disclosure of information regarding domestic support obligations to the Chapter 13

trustee. The required forms had previously been sent to Mr. Tennant. The notice indicated that if the documents were not filed within 30 days, the case would be scheduled for hearing to determine if the case should be closed without entry of a discharge.

Six weeks later, when the Debtor had still not filed the required motion for entry of discharge and certification of plan completion, the Court issued a show cause order and notice of a hearing to determine whether the case should be closed without entry of a discharge. This show cause order was mailed to the Debtor and sent to both Mr. Tennant and the Chapter 13 trustee electronically. The Chapter 13 trustee and counsel for the Bankruptcy Administrator appeared at the show cause hearing held on May 25, 2011. Neither the Debtor nor Mr. Tennant was present. The Court found cause to close the case without entry of a discharge, and on June 2, 2011 an order was entered to that effect.[1] The order directing that the case be closed without entry of the discharge was mailed to the Debtor and sent to both Mr. Tennant and the Chapter 13 trustee electronically. The case was closed pursuant to § 350(a) on August 8, 2011.

Now, more than three years after the case was closed, the Debtor has filed the present Motion to Reopen the case in order to file a Motion for Entry of Discharge, Certification Regarding Plan Completion, and Statement Regarding Bankruptcy Rule 1007(b)(8) as required by local procedure. Mr. Tennant represents that in 2011, the Debtor did in fact timely complete all of the necessary paperwork and provide it to his office. Mr. Tennant then forwarded these documents to the Chapter 13 office; however, he failed to file them with the court due to the absence of an administrative assistant from his office. Since that time, no action has been taken against the Debtor by any creditor to collect on a debt that was provided for in the Debtor's plan.

[1] The order did not deny the Debtor a discharge; it simply directed the case to be closed without the entry of the order of discharge.

The Debtor's missing discharge came to light during the course of her efforts to refinance the mortgage on her residence.

DISCUSSION

Section 350(b) of the Bankruptcy Code provides that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). The moving party has the burden of establishing grounds to reopen the case. In re Arana, 456 B.R. 161, 172 (Bankr. E.D.N.Y. 2011). In the Fourth Circuit, the reopening of a closed case is discretionary and depends upon the circumstances of the case. Hawkins v. Landmark Fin. Co. (In re Hawkins), 727 F.2d 324, 327 (4th Cir.1984); In re Hamlett, 304 B.R. 737, 740 (Bankr. M.D.N.C. 2003). "When exercising its discretion, the bankruptcy court should consider the equities of a case with an eye towards . . . the principles that underlie the Bankruptcy Code." In re Burton-Alston, No. 97-16333, 2006 WL 12904, at *2 (Bankr. M.D.N.C. Jan. 3, 2006) (citing In re Kapsin, 265 B.R. 778, 780 (Bankr. N.D. Ohio 2001)). The court may consider the delay between the closing of the case and the motion to reopen as well as any prejudice to other parties. In re Midlands Util., Inc., 251 B.R. 296, 299 (Bankr. D.S.C. 2000). In Hawkins for example, the Fourth Circuit found that costs sustained by a creditor in instituting foreclosure proceedings were sufficient to constitute prejudice and accordingly affirmed the bankruptcy court's decision to deny a debtor's motion to reopen a case to file a motion to avoid a lien. See Hawkins, 727 F.2d at 327; see also In re Chen, 231 B.R. 901, 903 (Bankr. E.D. Va. 1999) (denying motion to reopen where creditor had sustained court costs in instituting the state court foreclosure proceedings). But see In re Oglesby, No. 13-32362, 2014 WL 5113587, at *6 (Bankr. N.D. Ohio Oct. 10, 2014) (conditioning the reopening of case to avoid lien upon debtor's reimbursement of the fees and costs a creditor incurred due to debtor's

unreasonable and prejudicial delay). However, delay in requesting the reopening of a case, standing alone, does not generally constitute prejudice. In re Male, 362 B.R. 238, 242 (Bankr. E.D.N.C. 2007).

The court may also reopen a case to grant a discharge, such as when a case has been closed without a discharge due to the debtor's failure to take the financial management course required by §§ 727(a)(11) or 1328(g). See, e.g., In re Knight, 349 B.R. 681, 685 (Bankr. D. Idaho 2006) (finding that the debtor's desire to file a certificate of completion of a financial management course and obtain a discharge constituted "cause" under § 350(b)); In re Cooper, No. 11-35957, 2012 WL 1605950, at *1 (Bankr. N.D. Ohio May 8, 2012) (reopening case to allow debtor to file certificate of financial management course and obtain a discharge). As when presented with a motion to reopen a case to avoid a lien, the court should consider whether and to what extent a creditor would be prejudiced by the reopening of the case to enter a discharge. In re Meaney, 397 B.R. 390, 395 (Bankr. N.D. Ill. 2008). In addition to considering possible prejudice to creditors, some courts consider whether there is a reasonable explanation for both the debtor's failure to comply with financial course requirements and counsel's failure to monitor compliance, as well as the timeliness of the request for relief. See, e.g., In re Johnson, 500 B.R. 594, 597 (Bankr. D. Minn. 2013) (denying motion to reopen to file certificate of financial management course and obtain a discharge where the debtor gave no reasonable explanation of a four-year delay); In re Villarroel, No. 07-14084-RGM, 2008 WL 2518713, at *1 (Bankr. E.D. Va. June 20, 2008) (finding no reasonable explanation and denying a motion to reopen).

Here, the Debtor seeks to reopen the case in order to obtain her discharge, but unlike in the cases discussed above, the Debtor timely completed her financial management course and

filed the appropriate certificate with the court. Acting in good faith, the Debtor also completed, signed, and delivered all of the required paperwork to her attorney. The requisite motion was simply not filed with the court. The Court has considered and finds no prejudice to any party, as it appears that no action has been taken by any creditor since the closing of the case. Wells Fargo received due and proper notice of both the Motion to Reopen and the hearing and did not respond or appear.

Although the delay is both significant and without reasonable explanation, under the circumstances of this case, including the absence of any prejudice to creditors as well as the absence of fault on the part of the Debtor, and bearing in mind the underlying purpose of the Bankruptcy Code to grant the honest but unfortunate debtor a fresh start, the Court finds in the exercise of its discretion that the Debtor's Motion to Reopen the case for the purpose of allowing the Debtor to file a motion for entry of discharge should be granted.

Accordingly, it is hereby ordered that the Debtor's Motion to Reopen is granted. It is further ordered that the Debtor's counsel, rather than the Debtor personally, should bear any costs or fees associated with the reopening of this case and the entry of discharge, including the filing fee for the Motion to Reopen.

END OF DOCUMENT