



SO ORDERED.

SIGNED this 2nd day of December, 2016.

Catharine R. Aron

UNITED STATES BANKRUPTCY JUDGE

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

In re:

Velma Martin Thomas,

Debtor.

Case No. 16-50162

ORDER DISMISSING CASE WITH BAR FROM REILING

THIS MATTER came before the Court on November 16, 2016 upon the Motion by Bankruptcy Administrator to Dismiss Case with a Permanent Bar from Refiling [Doc. # 47] (“the Motion to Dismiss”). At the hearing, Robert Price appeared on behalf of the United States Bankruptcy Administrator (the “BA”). The Debtor, who is *pro se*, did not appear. The Court received testimony from Lisa Terry, an employee with Financial Pathways of the Piedmont a/k/a Consumer Credit Counseling Service. After reviewing the Motion; the record in this case; the proceedings in the Debtor’s previous bankruptcy filings, of which the Court has taken judicial notice under Rule 201 of the Federal Rules of Evidence¹; the testimony before the Court; and the arguments of the Bankruptcy Administrator, the Court finds that Motion should be granted in part and denied in part for the reasons which follow.

¹ This rule is made applicable in bankruptcy cases via Rule 9017 of the Federal Rules of Bankruptcy Procedure.

FACTS

The Debtor commenced this case, her eleventh in this Court since 2000², on February 23, 2016. On March 25, 2016, the Court dismissed the case with prejudice with a 180 day bar from refiling [Doc. # 21], based upon the Debtor's failure to pay her filing fee and history as a serial filer. The Court reopened the case on August 2, 2016 at the request of the BA.

In the motion presently before the Court, the BA requests that the Court dismiss this case with a permanent bar from refiling under 11 U.S.C. § 349. In support of his motion, the BA notes that the Debtor (1) has violated prior orders of the Court; and (2) submitted a false credit counseling certificate in this case and in a 2013 case in the Western District of North Carolina.

The Debtor has indeed violated prior orders of the Court. On July 5, 2013, the Court dismissed one of the Debtor's previous Chapter 13 cases, Number 13-50127, with prejudice. Despite this bar, the Debtor filed a Chapter 13, Number 13-50600, on July 12, 2013 in the Western District of North Carolina. The Debtor also violated the 180 day bar issued in this case when she filed Chapter 13 case Number 16-02758-5-DMW in the Eastern District of North Carolina on May 24, 2016.

In addition to these violations of Court orders, the Debtor submitted false information to the Court in this case. The certificate of credit counseling on file indicates that the Debtor received counseling services from Consumer Credit Counseling Service ("CCCS") on February 4, 2016, at 12:07 pm [Doc. # 20]. The certificate is marked as number 579-1059644 and signed by Lisa Engelkins, certified counselor. *Id.* Lisa Terry, formerly Lisa Engelkins, works at Financial Pathways of the Piedmont a/k/a CCCS. Ms. Terry has not handled online pre-filing courses—or signed certificates of credit counseling for CCCS—since January of 2014. She was

² The first ten case numbers since 2000 are, in chronological order: 00-51781; 01-50111; 03-52958; 05-50180; 07-50286; 09-51006; 09-51838; 10-51109; 12-51426; and 13-50127.

also married in November of 2014 and has not used the name Engelkins since that time. Ms. Terry is, moreover, familiar with the records of CCCS. Those records confirm that the Debtor last completed a pre-filing course with CCCS on October 4, 2012, at 12:07 pm and was issued certificate number 579-1059644. Thus, it is clear based on the number, time, and name on the certificate on file in this case, as well as upon Ms. Terry's testimony, that the certificate in this case was forged.

For similar reasons, it is clear that the Debtor's credit counseling certificate in case Number 13-50600 was also forged. That certificate indicates that the Debtor received counseling services from CCCS on March 4, 2013 at 12:07 pm, is marked as number 579-1168270, and is signed by Lisa Engelkins, certified counselor. Ms. Terry testified at the hearing that number 579-1168270 was in fact the number CCCS wrote on a certificate of credit counseling obtained by the Debtor's sister, Ms. Sheila Thompson, on March 27, 2013.

While the Motion to Dismiss only requests that the Court dismiss the case with a permanent bar from refiling, at the hearing on the motion, the BA indicated that in the alternative, he would request the Court to dismiss the case for a longer bar than 180 days.

ANALYSIS

Under 11 U.S.C. § 349, the Court may dismiss a case, and, for "cause", (1) bar the permanent discharge, in a later case, of debts that were dischargeable in the case dismissed, or (2) prohibit the debtor from filing another case for some time in the future. *In re Weaver*, 222 B.R. 521, 522 (Bankr. E.D. Va. 1998) (citing *Colonial Auto Center v. Tomlin (In re Tomlin)*, 105 F.3d 933, 937 (4th Cir. 1997)); see *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 737 (B.A.P. 6th Cir. 2010) (discussing the court's authority to impose longer bars to refiling under § 105(a) and § 349(a) than the typical 180 day bar under § 109(g)); *Marshall v. McCarty (In re Marshall)*,

407 B.R. 359, 362 (B.A.P. 8th Cir. 2009) (noting that bankruptcy courts consistently derive the power to sanction serial filers under § 105(a) or § 349(a) and finding no abuse of discretion in bankruptcy court's decision to dismiss a petition with prejudice to refile for one year); *see generally Casse v. Key Bank Nat'l Assoc. (In re Casse)*, 198 F.3d 327, 337-38 (2d Cir. 1999) (explaining that, "in all Circuits but the Tenth, bankruptcy courts and district courts invariably derive from § 105(a) or § 349(a) of the Code, or from both sections in some cases, the power to sanction bad-faith serial filers . . . by prohibiting further bankruptcy filings for longer periods of time than the 180 days specified by § 109(g)"). *But see In re Frieouf*, 938 F.2d 1099, 1103 (10th Cir. 1991) ("[S]ection 349(a), by its plain language, must be read as allowing a bankruptcy court, for cause, to permanently disqualify a class of debts from discharge, but a bankruptcy court may not deny future access to bankruptcy court, except under the circumstances of section 109(g).").³

While the BA cites *Tomlin*, 105 F.3d at 937-39, for the proposition that the Court may forever enjoin a debtor from filing for bankruptcy under 11 U.S.C. § 349, the only excerpts upon which the BA relies are in fact with respect to the Court's authority to bar the permanent discharge of certain debts. A permanent bar to the discharge of previously existing debts "is at times referred to as the capital punishment of bankruptcy[.]" and is considered "a severe sanction warranted only by egregious misconduct." *Id.* at 937 (internal citation omitted). While the *Tomlin* court discusses the drastic nature of a permanent bar to the discharge of pre-existing debts, it never discusses whether a bankruptcy court may permanently enjoin a debtor from seeking the other remedial forms of relief offered by the Bankruptcy Code, or enjoin the discharge of future but as of yet non-existent debts. The BA has failed to provide the Court with any precedent to permanently bar the Debtor from filing bankruptcy.

³ The Court in this case also overruled the lower court's finding that the Chapter 11 debtor was barred from filing any bankruptcy petition for a period of three years.

Nevertheless, the Court finds that there is cause to dismiss this case for a period exceeding 180 days due to the severity of the Debtor's misconduct. Specifically, the Court finds that, in light of the Debtor's history as a serial filer; her violation of prior orders of the Court; and her submission of false evidence to the Court, the case should be dismissed for a period of one year.

Based on the foregoing, it is hereby ORDERED that:

- (1) The BA's Motion to Dismiss is GRANTED IN PART AND DENIED IN PART; and
- (2) the Case is DISMISSED WITH A ONE YEAR BAR FROM REILING A

CHAPTER 13 PETITION. The one year period shall commence on the date of the entry of this Order.

END OF DOCUMENT

PARTIES TO BE SERVED

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16-50162 C-13

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