

Case dismissed by Court without prejudice after original plan was stricken by Court, Debtor failed to make plan payments at instruction of attorney, and upon filing a new plan within days of dismissal hearing

Case: 11-10681 *Londo*

Docket: 2/1/12 Confirmation and Dismissal Docket

**Facts:** The Debtor's original plan was struck by the Court for improper service. The Debtor's attorney misinterpreted the "Order Dismissing Without Prejudice Chapter 13 Plan" as an order dismissing the bankruptcy and advised his client not to make any Chapter 13 plan payments. In that the attorney believed that the case had been dismissed, the attorney did not attend the scheduled 341 meeting. The Debtor appeared but the Trustee could not hold the meeting because no Chapter 13 plan was on file. The Trustee filed his Motion to Dismiss based upon the failure to file a Chapter 13 plan and failure to make plan payments. The Debtor's attorney filed an objection to the Motion to Dismiss thereby alleging that a new Plan would be filed and that the Debtor would bring her plan payments current. Two days prior to the hearing, a new Chapter 13 Plan was filed by the Debtor. The matter came before the Court for confirmation and the dismissal hearing. The attorney for the Debtor advised the Court that the Debtor had the funds to bring her plan payments current but had not forwarded such to the Trustee because the Debtor wanted to see how the Court was going to rule upon the Trustee's Motion to Dismiss. The Debtor was not present in Court.

**Ruling:** The Court dismissed the case pursuant to the Trustee's Motion to Dismiss but did waive the prejudice portion of the Motion in that the Debtor's attorney took the blame for the Debtor's failure to make Chapter 13 Plan payments. The Court did note that the attorney had used his one "free" pass with the Court on this issue.

**Result:** The Trustee believes that the dismissal of this case was proper based upon the Debtor's failure to make Chapter 13 plan payments. The Debtor filed an objection to the Trustee's Motion to Dismiss wherein she alleged that she would make the payments to the Trustee as well as file a new Plan. The Debtor did file a new Plan but failed to make the payments to the Trustee. The Debtor allegedly had the funds to bring the plan payments current but intentionally held on to the funds to see how the Court would rule upon the Trustee's Motion to Dismiss. Had the Debtor brought her plan payments current with the Trustee prior to the hearing, the Court would probably not have dismissed the case.