

Denial of Debtor's Motion to Vacate Dismissal Order after dismissal of the Case Pursuant to Conditional Dismissal Order

10-10544 Hunter: **Facts:** The following events occurred in this case:

9/12/12: Trustee filed his Motion to Dismiss based upon the Debtor's failure to make Chapter 13 plan payments. The Motion to Dismiss was set for hearing on the 10/3/12 Beaumont docket. At the time of the filing of the Motion to Dismiss, the Debtor was delinquent in the amount of \$520.00 with the next payment in the amount of \$325.00 being due on 10/26/12.

10/3/12: In that the Debtor was less than two payments delinquent, the Debtor and the Trustee entered into a Conditional Dismissal Order wherein the Debtor would be current by 11/20/12.

11/5/12: A payment in the amount of \$585.00 posted thereby cutting the arrearage to \$260.00.

11/20/12: On the dismissal deadline pursuant to the Conditional Dismissal Order, the Debtor was still delinquent in the amount of \$260.00.

11/26/12: A payment in the amount of \$325.00 came due thereby increasing the delinquency to \$585.00.

12/3/12: The Trustee filed his Certification of Non-Compliance and Dismissal Order based upon the Debtor's failure to become current on her plan payments.

12/5/12: A payment posted in the amount of \$585.00 that brought the Debtor current on her plan payments.

12/6/12: The Court entered the dismissal order thereby dismissing the case based upon the Debtor's failure to be in compliance with the dismissal deadline as set forth in the Conditional Dismissal Order.

1/4/13: The Debtor filed her Motion to Vacate the Dismissal Order based upon her bringing her plan payments current prior to the entry of the Dismissal Order.

1/8/13: The Trustee objected to the Motion in that the Debtor was not current on her plan payments by the date of the dismissal deadline as set forth in the Conditional Dismissal Order or on the date of his Certification.

Ruling: On 1/9/13, the Court entered an Order denying the Motion to Vacate the Dismissal Order based upon two grounds: the Debtor failed to file the Motion to Vacate the Dismissal Order within the time deadlines as required under Federal Rules of Bankruptcy Procedure 9023; and the Motion fails to set forth any grounds for relief from that dismissal order pursuant to Federal Rules Civil Procedure 60(b) as incorporated into contested matters in bankruptcy cases by Federal Rules Bankruptcy Procedure 9024. In other words, the Motion to Vacate the Dismissal Order was not timely filed and the Debtor was not in compliance with the terms of the Conditional Dismissal Order by being current by the Dismissal Deadline as set forth therein or within the additional time period that the Trustee gave before he submitted his Certification of Non-Compliance. The payment that brought the Debtor current posted between the date of the Certification and the date of the entry of the Dismissal Order. With respect to the failure to set forth any grounds for relief, the Court made the following observations:

The Trustee was not bound to make any agreement at the dismissal hearing. The Debtor was not current on plan obligations on the date of the dismissal hearing and the case could have been legitimately dismissed on that date. However, the Trustee relented and agreed to give additional time for the Debtor to comply with her plan obligations. Notwithstanding her agreement, she failed to abide by the agreed deadline set forth in the Conditional Dismissal Order. However, the Trustee still deferred on the submission of the dismissal order to the Court for a number of days after the agreed deadline to provide the Debtor with yet more time to comply with the terms of the agreement. The Debtor failed to comply within that additional period as well. The fact that the Debtor subsequently tendered money to the Trustee after the

submission of the dismissal order or is now prepared to fulfill the requirements of the agreement does not excuse her failure to abide by her agreement with the Trustee and to fulfill her obligations over the significant period of time previously granted to her.

Conclusion: Generally, the Trustee will continue to enter into Conditional Dismissal Orders thereby giving debtors additional time to bring their plan payments current within the Trustee's guidelines as posted on the Trustee's website. However, once the dismissal deadline passes and the Trustee accurately submits a Certification that the debtors are not current pursuant to the Conditional Dismissal Order, the Trustee will oppose any motions to vacate the dismissal order for payments that may post after the certification.