

ORDERED in the Southern District of Florida on March 8, 2006



*Laurel Myerson Isicoff*  
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Laurel Myerson Isicoff, Judge  
United States Bankruptcy Court

U S BANKRUPTCY COURT  
SO. DISTRICT OF FLORIDA  
MAR 8 2006  
FILED \_\_\_\_\_ RECEIVED \_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE: CASE NO. 06-10561-BKC-LMI  
LUDY CALDERON, Chapter 13  
Debtor.

**ORDER DISMISSING, WITHOUT PREJUDICE, PRO SE PETITION  
OF LUDY CALDERON FOR FAILURE TO OBTAIN BUDGET AND  
CREDIT COUNSELING PRIOR TO FILING**

This matter came before the Court upon a *pro se* petition of Ludy Calderon filed together with a statement by Ms. Calderon (the "Statement") regarding her failure to obtain the credit counseling required by 11 U.S.C. §109(h)(1) prior to filing the petition. For the reasons set forth below, this bankruptcy case is dismissed. However, since Ms. Calderon was never a debtor in this case, this case does not constitute "a case of the debtor" for purposes of any subsequent bankruptcy petition that Ms. Calderon should seek to file.

11 U.S.C. §109(h) (1) provides that no individual may be a debtor under the Bankruptcy Code "unless such individual has, during the 180-day period preceding the

date of filing of the petition by such individual, received from any approved nonprofit budget and credit counseling agency . . . an individual or group briefing . . . that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.”

11 U.S.C. § 109(h)(3) provides that, notwithstanding an individual's failure to get the credit counseling pre-petition, the individual may nonetheless be eligible to be a debtor if the individual “submits to the court a certification that – (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1); (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain [the counseling] during the 5-day period beginning on the date on which the debtor made that request; and (iii) is satisfactory to the court.”

Ms. Calderon filed a *pro se* petition on February 21, 2006, together with the Statement. In the Statement, Ms. Calderon wrote that “the reasons I did not obtain the credit counseling class before filing this bankruptcy is that I did not have the time to do so since my home is scheduled for foreclosure sale on February 22, 2006 and I thought I would have been able to refinance my home before tomorrow and thus did not expect to file this bankruptcy.” However, the Statement is deficient because it does not state that Ms. Calderon requested credit counseling services from an approved agency but was unable to obtain those services within the time period specified in the statute.

The Court finds, that based on the common understanding of exigency and exigent circumstances, the imminent loss of one's home qualifies as an exigent circumstance, and, therefore, Ms. Calderon meets the first requirement of the

§109(h)(3) exception. However, Ms. Calderon has not satisfied the second requirement of §109(h)(3), and, therefore, Ms. Calderon is not eligible to be a debtor under the Bankruptcy Code. Accordingly this bankruptcy case must be dismissed. The balance of any filing fees, if any, owed by Ms. Calderon must immediately be paid to the Clerk of the Bankruptcy Court pursuant to Local Rule 1017-2(E).

This dismissal does not preclude Ms. Calderon from filing a second case if Ms. Calderon meets all the filing requirements including timely completion of credit counseling. Since Ms. Calderon has never been a debtor, this case being dismissed does not, and shall not, constitute a “case of the debtor”. Thus, for example, the provisions of 11 U.S.C. § 362(c)(3) regarding termination of the automatic stay “if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed” would not apply if Ms. Calderon were to file another bankruptcy petition within one year of the filing of the instant case.<sup>1</sup>

Based on the foregoing it is ORDERED AND ADJUDGED that the voluntary petition filed by Ludy Calderon is DISMISSED, without prejudice.

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The Clerk of the Court shall furnish copies to all creditors and interested parties listed on the matrix.

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<sup>1</sup> If Congress intended this subsection to apply to any prior case involving the individual, whether the individual was a debtor in the prior case, it is presumed that Congress would have used the phrase “single or joint case of such individual.”