

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 14-58874

BENJAMIN WAYNE SPITZER
and
LEAH KAREN SPITZER,

Chapter 7

Judge Thomas J. Tucker

Debtors.

**ORDER DISMISSING CASE FOR FAILURE TO TIMELY COMPLY WITH
CREDIT COUNSELING REQUIREMENT OF 11 U.S.C. § 109(h)(1)**

On December 9, 2014, the Debtors filed a voluntary petition for relief under Chapter 7, commencing this case (Docket # 1). Also on December 9, 2014, each of the Debtors filed a document entitled “Exhibit D - Individual Debtor’s Statement of Compliance with Credit Counseling Requirement” (Docket ## 3 and 4, the “Exhibit D”). On their respective Exhibits D, the Debtors checked the box before numbered paragraph 3, seeking a temporary waiver of the credit counseling requirement due to exigent circumstances. Further, on their respective Exhibits D, the Debtors stated that the exigent circumstances consisted of the garnishment of Leah Spitzer’s “wages on 12/09/2014” and that they “were only able to retain our attorney on 12/08/2014.”

On December 21, 2014, each of the Debtors filed a “Certificate of Counseling,” which indicates that the Debtors received credit counseling on December 17, 2014. (Docket # 18.) On December 22, 2014, a “Notice of Deficient Pleading” was filed and served on the Debtors (Docket # 25, the “Notice”). The Notice informed the Debtors that their voluntary petition was defective because it was not accompanied by a certificate of exigent circumstances - credit counseling waiver and a motion for approval of certificate of exigent circumstances under 11 U.S.C. § 109(h)(3)(A). The Notice further provided that any “corrected/missing document must be filed with the court within seven (7) days of this notice.” Thus, the filing deadline under the Notice was December 29, 2014. As of today, January 5, 2015, the Debtors still have not cured the deficiencies noted in the Notice.

For the following reasons, the Court will dismiss this case.

11 U.S.C. § 109(h)(1) provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) 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)(A) provides a limited exception to § 109(h)(1)'s requirement of obtaining a credit counseling briefing on or before the date of filing the bankruptcy petition. It provides:

Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who 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 services referred to in paragraph (1) during the 7-day period beginning on the date on which the debtor made that request; and
- (iii) is satisfactory to the court.

When a debtor files a certification under § 109(h)(3)(A), Local Bankruptcy Rule 1007-6(a) requires that the debtor:

shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties and file a certificate of service. The deadline to file a response shall be 14 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. The motion shall be accompanied by a notice that the deadline to file a response is 14 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.

E.D. Mich. LBR 1007-6(a).

This case must be dismissed because (1) the Debtors each failed to meet the requirement of 11 U.S.C. § 109(h)(1), that they obtain the required credit counseling briefing *on or before* the date of filing their bankruptcy petition, to be eligible to be a debtor in this case; and (2) the Debtors failed to file, timely or otherwise, a certificate of exigent circumstances as required by 11 U.S.C. § 109(h)(3)(A) and a “motion for approval of the certification” as required by LBR 1007-6(a) (E.D. Mich.). Because the Debtors did not meet these requirements, they are not eligible to be debtors in this case under 11 U.S.C. § 109(h)(1).

Accordingly,

IT IS ORDERED that this bankruptcy case is dismissed.

Signed on January 05, 2015

/s/ Thomas J. Tucker

**Thomas J. Tucker
United States Bankruptcy Judge**