

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:07-bk-05979-ABB
Chapter 13

HOLLY DAWN COOPER,

Debtor.

ORDER

This matter came before the Court on the Motion to Dismiss Chapter 13 Case for Debtor's Failure to Complete Credit Counseling Briefing Pursuant to Section 109 ("Motion") (Doc. No. 26) filed by America's Servicing Company ("Movant") seeking dismissal of this case pursuant to Section 109(h)(1) of the Bankruptcy Code. Holly Dawn Cooper, a/k/a Holly D. Mosley, a/k/a Holly D. Broaden, the *pro se* Debtor herein ("Debtor"), filed a Chapter 13 petition (Doc. No. 1) on November 26, 2007 ("Petition Date"). An evidentiary hearing was held on February 20, 2008 at which the Debtor, counsel for the Movant, and the Chapter 13 Trustee appeared.

Section 109(h)(1) of the Bankruptcy Code requires a debtor receive credit counseling within 180 days *prior* to filing a petition in bankruptcy. A filer who fails to fulfill all of the requirements of Section 109(h) "may not be a debtor" in bankruptcy. 11 U.S.C. § 109(h)(1). The Debtor did not obtain credit counseling within the 180-day prepetition period pursuant to 11 U.S.C. Section 109(h)(1). An individual, who is deemed ineligible to be a debtor pursuant to Section 109(h), may not be a debtor pursuant to 11 U.S.C. Section 301(a).

The Debtor was ineligible to commence a bankruptcy case on the Petition Date pursuant to 11 U.S.C. Section 109(h). No case resulted from the filing of the petition pursuant to 11 U.S.C. Section 301(a). The Debtor's petition is due to be stricken pursuant to In re Carey, 341 B.R. 798 (Bankr. M.D. Fla. 2006).

Accordingly it is,

ORDERED, ADJUDGED AND DECREED that the Debtor was ineligible to be a

debtor on the Petition Date pursuant to 11 U.S.C. Section 109(h)(1); and it is further

ORDERED, ADJUDGED AND DECREED that the Debtor did not commence a bankruptcy case pursuant to 11 U.S.C. Section 301(a) and the petition is hereby **STRICKEN**; and it is further

ORDERED, ADJUDGED AND DECREED that the Debtor may file a new case pursuant to Chapter 13; and it is further

ORDERED, ADJUDGED AND DECREED that the Debtor has a \$0.00 balance in the Trustee's trust account and no funds exist for disbursement to claimants or turnover to the Debtor.

Dated this 27th day of February, 2008.

/s/Arthur B. Briskman

ARTHUR B. BRISKMAN

United States Bankruptcy Judge