

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:03-bk-02153-ABB
Chapter 13

CARMEN MUNOZ,

Debtor.

ORDER

This matter came before the Court on the Motion to Dismiss Case for Failure to Provide Tax Returns and Request for Hearing ("Motion") (Doc. No. 46) filed by Laurie K. Weatherford, the Chapter 13 Standing Trustee herein ("Trustee"). Carmen Munoz, the Debtor herein ("Debtor"), did not file a response to the Motion. Evidentiary hearings were held on March 13, 2008 and April 15, 2008 at which the Trustee, the Debtor, and counsel for the Debtor appeared.

The Debtor filed this case on March 3, 2003 (Doc. No. 1). Her Amended Individual Debtor's Chapter 13 Plan (Doc. No. 15) was confirmed by the Confirmation Order entered on April 27, 2004 (Doc. No. 17). The Plan provides for an approximate percentage payout of 19% to unsecured creditors. The Confirmation Order sets forth:

All tax returns must be provided to the Trustee annually by April 30. All future refunds from the Internal Revenue Service shall be turned over to the Chapter 13 Standing Trustee for distribution to the unsecured creditors.

Doc. No. 17 at Exh. A. The Debtor did not appeal the Confirmation Order. It is a final, non-appealable order.

The Trustee sought dismissal of the Debtor's case in July 2007 for the Debtor's failure to provide a copy of her 2006 federal income tax return to the Trustee. The Debtor furnished a copy of the 2006 return to the Trustee in compliance with the Order of Impending Dismissal (Doc. No. 42).

The Trustee filed the current Motion seeking dismissal of this case due to the Debtor's failures to provide a copy of her 2005 tax return and to turn over her 2006 federal tax refund of \$7,073.00 to the Trustee. The Debtor filed a Notice of Filing Tax Returns on April 11, 2008 (Doc. No. 50) stating the Debtor filed her 2005 tax return with the IRS "and the Court" and provided a copy of the return to the Trustee. No copy of the 2005 return has been filed with the Court.

"The provisions of a confirmed plan bind the debtor" 11 U.S.C. Section 1327(a). The Debtor failed to comply with the Confirmation Order. She failed to provide a copy of her 2005 tax return to the Trustee by April 30, 2006 and she failed to turn over her 2006 federal tax refund of \$7,073.00 to the Trustee. Distribution of the tax refund pursuant to the Plan would significantly benefit the Debtor's unsecured creditors.

Dismissal of a Chapter 13 case is appropriate where a debtor fails to turn over a post-petition income tax refund in accordance with the terms of the confirmation order. In re Zayed, 340 B.R. 108, 111 (Bankr. M.D. Fla. 2006). The Debtor's case is due to be dismissed.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Trustee's Motion to Dismiss (Doc. No. 46) is hereby **GRANTED** and the above-captioned case is **DISMISSED**; and it is further

ORDERED, ADJUDGED and DECREED that of the \$937.56 balance in the Trustee's trust account for this case, administrative expenses shall be disbursed as follows: \$0.00 to secured creditors provided for in the Plan; \$0.00 for attorney's fees provided for in the Plan; and \$0.00 to the Trustee. The balance of \$937.56 shall be turned over to the Debtor.

Dated this 7th day of May, 2008.

/s/Arthur B. Briskman
Arthur B. Briskman
United States Bankruptcy Judge