

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:08-bk-00780-ABB  
Chapter 13

DAVID LAWRENCE RUETZ,

Debtor.

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**ORDER**

This matter came before the Court on the Emergency Motion for Relief from Automatic Stay ("Motion") (Doc. No. 6) filed by the United States of America ("Movant") seeking relief from the automatic stay of 11 U.S.C. Section 362(a) to conduct a foreclosure sale of real property scheduled for February 5, 2008 at 10:00 a.m. David Lawrence Ruetz, the Debtor herein ("Debtor"), filed a Chapter 13 petition (Doc. No. 1) on February 4, 2008 ("Petition Date"). A hearing was held on February 5, 2008 at which counsel for the Movant and the Debtor appeared telephonically.

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) (2005). 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) and no automatic stay of 11 U.S.C. Section 362(a) arose. 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 Movant's Motion is **MOOT** as no automatic stay of 11 U.S.C. Section 362(a) arose on the Petition Date.

Dated this 5<sup>th</sup> day of February, 2008.

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