

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:04-bk-11817-ABB
Chapter 13

ANNE FREY DEAN,

Debtor.

ORDER

This matter came before the Court on the Trustee's Motion to Dismiss Case for Incurring Post-Petition Debt and Request for Hearing (Doc. No. 68) ("Motion") filed by Laurie K. Weatherford, Chapter 13 Trustee ("Trustee"), against Anne Frey Dean, the Debtor herein ("Debtor"). The Debtor, in response to the Trustee's Motion, filed the Motion for Entry of Discharge and Response to the Trustee's Motion to Dismiss (Doc. No. 69). A hearing was held on February 5, 2008 at which the Debtor, her counsel, and the Trustee appeared. The Court makes the following findings and rulings after reviewing the pleadings and evidence, hearing argument and being otherwise fully advised in the premises.

The Debtor filed this Chapter 13 case on October 30, 2004 (Doc. No. 1). The Debtor's Second Amended Plan (Doc. No. 24) was confirmed on May 9, 2005 (Doc. No. 26). The Confirmation Order prohibited the Debtor from "incurring any post-confirmation debt during the term of this plan without prior approval of the Court or the Trustee." The Plan provided for thirty-six consecutive monthly payments. The Debtor completed all payments totaling \$97,577.30.

The Internal Revenue Service ("IRS") conducted an audit of her 2004 and 2005 income tax returns in October 2007. The Debtor may have failed to pay or withhold sufficient earnings to satisfy her income tax liabilities for 2004 and 2005. The IRS determined the Debtor is liable for \$18,068.00 for tax year 2004 and \$18,596.00 for tax year 2005. The Debtor became aware of this post-petition tax liability in October 2007 during the audit.

The post-confirmation tax liability is not included in the Plan. The IRS has not filed a claim for pre-petition tax liability pursuant to 11 U.S.C. Section 501(a) or a claim for post-petition tax liability pursuant to 11 U.S.C. Section 1305(a)(1).

The Debtor has not amended her Plan to include any tax liability.

The Trustee's Motion relies on In re Bennet, 200 B.R. 252 (Bankr. M.D. Fla. 1996), issued by this Court. The debtor's chapter 13 plan in Bennet was confirmed pursuant to an Order Establishing Duties of Debtor and Confirmation Procedures, Ordering Debtor's Compliance, Permitting Use of Property, Allowing Administrative Expenses, and Ordering Adequate Protection Payments ("Duties Order"). Id. at 253.

The Duties Order instructed Bennet to remain current on all federal and state taxes due after the commencement of the case, as well as not to incur any indebtedness without prior approval of the Court or the Trustee. Id. at 253. The debtor incurred significant income tax liability during the Chapter 13 case, totaling \$83,508.77. The IRS filed a claim pursuant to 11 U.S.C. Section 1305(a) for post-confirmation tax liability. The debtor continued to make plan payments while neglecting to pay his current income taxes or amend his plan to include the post-petition tax liability.

Bennet's failure to pay current income taxes facilitated his ability to fund his Chapter 13 plan and constituted an unreasonable delay prejudicial to creditors in violation of 11 U.S.C. Section 1307(c)(1). Id. at 254. The Court denied the debtor's request for a discharge, disallowing the Debtor to "use the bankruptcy process to discharge prepetition debt while simultaneously not paying post-confirmation taxes." Id. at 254. Debtor's case was dismissed for lack of good faith, for using the bankruptcy process as a subterfuge and creating an unreasonable delay prejudicing the IRS. Id. at 255.

Bennet is inapposite to the Debtor's case. Id. All thirty-six consecutive monthly payments in Debtor's Plan have been satisfied. The Debtor did incur post-petition debt without approval of the Court or Trustee in violation of the Confirmation Order; however, she made a good faith effort to pay her federal income taxes, as they became due. The tax liability at issue resulted from an audit, an *involuntary* assessment, conducted at the completion of the Plan Period. The Debtor failed to pay or withhold sufficient amounts of her earnings. The tax liability does not constitute a conscious effort or demonstrate a willful intent to incur indebtedness or prejudice the IRS.

The Debtor did not neglect her current tax liability in order to facilitate her Plan payments. The

unpaid tax liability did not become evident until October 2007; she made a good faith effort to pay her taxes during her Plan. The failure to pay or withhold sufficient amounts did not affect or impact on the completion of her Plan. The Debtor did not use the bankruptcy process as a subterfuge, or incur post-petition indebtedness to prejudice the IRS.

Cause to dismiss the Debtor's case pursuant to 11 U.S.C. §1307(c) has not been established. The post-confirmation tax liability is not a dischargeable debt pursuant to 11 U.S.C. Section 1328(a). The Debtor successfully completed her Chapter 13 payment plan, with payment of \$97,577.30. Anne Frey Dean is entitled to a discharge pursuant to 11 U.S.C. Section 1328(a). The Debtor's Motion (Doc. No. 69) is due to be granted.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Trustee's Motion to Dismiss Case for Incurring Post-Petition Debt (Doc. No. 68) is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Motion for Entry of Discharge (Doc. No. 69) is hereby **GRANTED** and

The general discharge of Debtor, ANNE FREY DEAN, is hereby **GRANTED** pursuant to 11 U.S.C. Section 1328(a).

Dated this 19th day of February, 2008.

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