

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:07-bk-00941-ABB  
Chapter 13

FLAVIO MANCILLA and  
ENEDINA MANCILLA,

Debtors.

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**ORDER**

This matter came before the Court on the Amended Petition and Motion for Determination that Exigent Circumstances Merit a Temporary Waiver of the Credit Counseling Requirement (Doc. Nos. 2, 32) (collectively, the "Motion") filed by Flavio Mancilla and Enedina Mancilla, the Debtors herein (collectively, the "Debtors"), and the Opposition (Doc. No. 18) filed by the secured creditor Investors One Corp. An evidentiary hearing was held on May 15, 2007 at which the Debtors, their counsel, counsel for Investors One Corp., and Laurie K. Weatherford, the Chapter 13 Trustee, appeared.

The Debtors instituted this case on March 13, 2007 ("Petition Date") by filing a Chapter 13 Petition in an attempt to stay a foreclosure sale of their home scheduled for March 14, 2007. Section 109(h)(1) of the Bankruptcy Code requires a debtor receive credit counseling within 180 days prior to filing a petition in bankruptcy. The Debtors did not obtain credit counseling within the 180-day prepetition period pursuant to Section 109(h)(1).

The prepetition credit counseling requirement may be waived in limited circumstances. Section 109(h)(3)(A) requires a debtor to certify: (i) exigent circumstances exist that merit a waiver of the counseling requirement; and (ii) the debtor *requested* credit counseling services from an approved nonprofit budget and credit counseling agency at least *five days prior* to filing a petition in bankruptcy. The certifications must be "satisfactory to the court" pursuant to Section 109(h)(3)(A)(iii). The Debtors seek a waiver of the prepetition counseling requirement pursuant to Section 109(h)(3)(A). The Debtors did not attempt to obtain credit counseling services prepetition. They failed to meet the requirements of Section 109(h)(3)(A) and their Motion is due to be denied.

A filer who fails to fulfill all of the requirements of Section 109(h) "may not be a debtor" in bankruptcy pursuant to 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 Section 301(a). The Debtors were ineligible to commence a bankruptcy case on the Petition Date pursuant to Section 109(h)(1). No case resulted from the filing of the Petition pursuant to Section 301(a) and there is no case to dismiss. The Debtors' Petition is due to be stricken pursuant to In re Carey, 341 B.R. 798, 804 (Bankr. M.D. Fla. 2006).

Accordingly it is,

**ORDERED, ADJUDGED AND DECREED** that Investors One Corp.'s Opposition is hereby **SUSTAINED** and the Debtors' Motion is **DENIED**; and it is further

**ORDERED, ADJUDGED AND DECREED** that the Debtors were ineligible to be debtors on the Petition Date pursuant to 11 U.S.C. Section 109(h)(1); and it is further

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

Dated this 12<sup>th</sup> day of April, 2007.

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