

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

TIMOTHY JAMES KREITNER,  
  
Debtor.

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Case No. DK 15-02177  
Chapter 7

ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

The court has reviewed the Debtor's Motion to Defer Entry of Discharge, his second such motion (the "Second Motion," ECF No. 31).<sup>1</sup> In response to his first deferral motion (ECF No. 15, the "First Motion"), the court deferred entry of the discharge to June 20, 2015 pursuant to Rule 4004(c)(2).<sup>2</sup> *See* Order dated May 19, 2015 (ECF No. 16). The court notes that the Clerk has not yet entered the discharge in this case, ostensibly because the Debtor has not timely filed a statement that he completed the personal financial management course as required by Rule 1007(b)(7).<sup>3</sup>

Debtors commonly seek to defer entry of discharge to buy more time to negotiate a reaffirmation agreement, which must be "made" before the discharge is entered. *See* 11 U.S.C. § 524(c)(1) (enforceable reaffirmation agreement must be "made" before entry of discharge). To

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<sup>1</sup> The Second Motion is identical to the First Motion, down to the date of counsel's electronic signature, suggesting that counsel may have filed the Second Motion inadvertently or at least without sufficient attention to detail, as explained below.

<sup>2</sup> *See* Fed. R. Bankr. P. 4004(c)(2). In the text of this Order, the court will refer to any of the Federal Rules of Bankruptcy Procedure as "Rule \_\_\_."

<sup>3</sup> The Debtor ought to have filed his statement under Rule 1007(b)(7) by August 10, 2015 -- 60 days after the first date set for the meeting of creditors. *See* Fed. R. Bankr. P. 1007(c). He is now running the risk that the court might close the case without entering a discharge.

accommodate the reaffirmation process, Rule 4004 authorizes limited deferral of the entry of the discharge, on the debtor's motion. *See* Fed. R. Bankr. P. 4004(c)(2)(authorizing deferral of discharges). The court's practice is to permit the Clerk to grant a debtor's first motion to defer, but to require a judge to consider a second deferral motion, despite the more permissive text of the local rule. *See* LBR 4004-1 (authorizing the Clerk to grant deferral motions); *but see* LBR 9029(e)(acknowledging court's authority to suspend provisions of local rules).

Although Rule 4004 authorizes deferral of the discharge on a debtor's motion, it nevertheless requires the court to grant discharges "forthwith" upon the passage of prescribed deadlines, provided other conditions are satisfied. *See* Fed. R. Bankr. P. 4004(c)(1); *see generally* 11 U.S.C. § 727(a). Congress and the drafters of Rule 4004 intended that a debtor should receive the benefits of the discharge sooner rather than later. Presumably and perhaps paternalistically, the limits within Rule 4004(c)(2) insulate debtors from pressure to reaffirm particular debts.

More specifically with respect to deferral motions, Rule 4004 provides as follows:

Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

Fed. R. Bankr. P. 4004(c)(2). Given the strong policy favoring a prompt fresh start, the court reads Fed. R. Bankr. P. 4004(c)(2) as authorizing only two deferral motions: the first for thirty days, and the second "to a date certain," provided the second is filed within the initial thirty-day period.

In the present case, the initial thirty-day deferral period prescribed in the Order dated May 19, 2015 expired on June 20, 2015. The Debtor, however, filed the Second Motion on

November 16, 2015 -- well beyond the time allowed. The Second Motion, therefore, is untimely and the court will deny it.

Finally, in observance of Rule 4004(c)(1), upon the satisfaction of the conditions prescribed therein, the Clerk shall enter the discharge forthwith.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Second Motion (ECF No. 31) is DENIED.

IT IS FURTHER ORDERED that the Clerk shall enter the discharge immediately upon the satisfaction of the conditions prescribed in Rule 4004(c)(1).

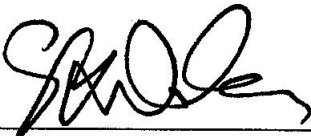
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Timothy James Kreitner, Gary J. Irving, Esq., attorney for Debtor, Thomas C. Richardson, Esq., Chapter 7 Trustee, the Office of the United States Trustee and entities requesting notice of this proceeding.

[END OF ORDER]

**IT IS SO ORDERED.**

Dated November 24, 2015



  
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Scott W. Dales  
United States Bankruptcy Judge