

FOLLOWUP TO 341(a) MEETINGS -- 1:45 P.M.
Documents to be Delivered at 341 Meeting

By: Robert L. Pryor

I. Cardinal Rule At all costs, attempt to avoid any followup to 341(a) meeting. Do all possible to close the first meeting.

A. Know your case and anticipate issues to avoid followup 341 meetings.

- (1) The experienced Chapter 7 and Chapter 13 practitioner should understand well in advance of the first meeting of creditors the issues upon which the case Trustee will focus during the examination of the Debtor.
 - a. He should communicate to the Debtor the potential pitfalls so he is not surprised by a position taken by the Trustee.
 - b. Additionally, the Debtor needs to understand the pitfalls so that he or persons with whom he has a relationship are not confronted with litigation to recover assets that were believed to be beyond the reach of the case Trustee.
- (2) a. The case Trustee will properly explore the potential to recover assets either because:
 - (1) there are issues as to whether they are exempt, in full or in part, or
 - (2) there are issues as to whether or not they can be recovered from third parties.
- b. The case Trustee will examine the Debtor's conduct to determine whether he is entitled to a discharge.
- (3) Thus, in the event that there is the potential for litigation, the Chapter 7 Debtor's counsel should anticipate these issues and appear at the 341 meeting completely well versed on:
 - a. the applicable case law;
 - b. facts which might mitigate against the Trustee's decision to pursue a recovery.
 - c. **CHAPTER 7 DEBTOR'S COUNSEL SHOULD PRODUCE ALL DOCUMENTS BEARING ON THE FOREGOING ISSUES**
- (4) The Trustee is quite willing to close the first meeting of creditors without further

investigation if he is convinced that

- a. there is no basis to further administer the case, or
- b. after a cost benefit analysis, it is not worthwhile to further administer the case.
- c. It is your job to provide sufficient factual and legal support for your position to convince the Trustee.

(5) Means Test

- a. It is surprising how many Debtor's counsel take unsupportable Means Test deductions and are oblivious to the obvious issues that this creates.
- b. If you are taking substantial or unique means test deductions, bring documents to support the claimed deduction.
- c. Know the current cases. There are various absolutely critical cases necessary to properly inform any Means Test analysis. Two of these are:

- (1) Ransom v. FIA Card Services, N.A., 131 S.Ct. 716 (2011) makes clear that one cannot take a line "23" or line "24" vehicle deduction if there are no ongoing payments to secured creditors or lessors.
- (2) Hamilton v. Lanning, 130 S.Ct. 2464 (2010) holds projected disposable income for Chapter 13 Plan purposes may adjust the Debtor's current monthly income because the Debtor received a non-recurring payment during the six (6) month look-back period.

(6) Know Your Judge

- a. Know which Judge you have and what specific decisions have been issued by that Judge that bear on your client's situation.

For example:

- (a) In re Colgate, 370 B.R. 50 (Bankr. E.D.N.Y. 2007) (Eisenberg, J.) Debt incurred from simply overspending rather than from unforeseen circumstances may constitute abuse..
- (b) Compare In re Orkwis, 457 B.R. 243 (Bankr. E.D.N.Y. 2011)(Grossman, J.) and In re Miller, 462 B.R. 421

(Bankr. E.D.N.Y. 2011) (Trust, J.) These courts differ as to the ability to use Chapter 20 to strip off wholly unsecured mortgages and treat same in Chapter 13, following Chapter 7 discharge.

- (c) Compare In re Duarte 2011 WL 2746186 (Bankr. E.D.N.Y. 2011)(Grossman, J.) and In re Spina 416 B.R. 92 (Bankr. E.D.N.Y. 2009)(Trust, J.) These courts differ on whether the bankruptcy estate and the estate of a non-debtor spouse should allocate a tax refund under the "50-50 rule" or under the "separate filing rule".

(7) Make Sure you Have it Right

- a. It is quite common to find typographicals and omissions when preparing for the first meeting.
- b. It is also quite common to have clients tell you they have omitted information.
- c. Use the Trustee's requests at the beginning of the first meeting to affirm that the petition and schedules are correct, and as to whether there are any further amendments or additions.
 - (1) to advise the Trustee of typos, omissions and corrections
 - (2) immediately follow up with amended schedules
 - (3) E.D.N.Y. Local Rule 1009-1 is attached
 - (4) a proposed form to be utilized to amend schedules is attached

II. Follow Up Documents

A. Trustee requests for additional information

- (1) Deliver documents promptly and in an organized form
- (2) Gamesmanship is usually ineffective - remember - "Your reputation precedes you"
- (3) A bankruptcy practitioner is disadvantaged in his daily practice if trustees are forced to take special care in examining his cases
- (4) Major inaccuracies, omissions and sloppiness in schedules can result in:
 - a. objections to discharge,

- b. motions to disgorge debtor's counsel's fees and,
- c. motions to dismiss for abuse. See In re Hammer 2912 WL 162303 (Bankr. N.D. Okla. January 19, 2012) "catch me if you can approach results is dismissal and disgorgement of fees."

III. Tax Returns Are An Important Source of Information

- (1) §521(e)(2)(A) - the federal tax return (or transcript thereof) for the most recent tax year ending immediately before the commencement of the case must be delivered to Case Trustee no later than seven days before the first meeting.
- (2) The tax returns reflect
 - a. the existence of assets
 - b. the sources of income
 - c. the disposition of assets
 - d. make sure this information squares with petition and schedules

IV. It Is All in the Details

- (1) Explore potential inheritances and potential insurance recoveries. See 11 U.S.C. §541(a)(5)(A) and (C)
- (2) Explore potential lawsuits
- (3) Review prior matrimonial agreements and understand pending matrimonial proceedings. See 11 U.S.C. §541(a)(5)(B).
- (4) Confirm that 529 Plan, 530 Plans UGMA and UTMA accounts are properly titled
- (5) Check the terms of IRA's. Make sure they are tax qualified. See In re Paley Sr. 459 BTL 270
- (6) In joint cases, determine that both debtors are liable on mortgage(s) and mortgage notes
- (7) Evaluate saleability of business interests
- (8) Check valuations on all assets
- (9) Explore potential voidable transfers
- (10) Be familiar with 11 U.S.C. § 526, 527 and 528 (copies annexed)

- (11) Understand the tax consequences of bankruptcy filings in both individual and corporate cases. See e.g., In re Koehell, 804 F.2d 84 (7th Cir. 1986), In re Majestic Star Casino LLC v. Bander Development, Inc., 2012 WL 204088 (Bankr. D.Del. January 24, 2012)
- (12) Understand the difference between discharging debt and avoiding liens
- (13) Know which debt is potentially nondischargeable