

CONSUMER BANKRUPTCY

Complying With the Payment Advice Rule

Recent case says all pay stubs may not be necessary

By Craig D. Robins

We all know that under the new bankruptcy laws debtors are required to file copies of all pay stubs for income received during the 60-day period prior to filing.

To put teeth into this requirement, the law further provides that failure to do so will result in the automatic dismissal of the bankruptcy case — a scary thought. What happens if a debtor files just one pay stub, but otherwise documents the payments they received?

The Second Circuit Court of Appeals just decided a case last month on August 9. It held that debtors do not need to file all of their pre-petition payment advices if they otherwise document all payment received from employers during the 60-day pre-petition period.

This case addressed for the first time in our circuit what obligations the Bankruptcy Code imposes upon a debtor with respect to the filing of payments advices. The bottom line is that debtors merely need to provide the necessary information on payments as opposed to the actual pay stubs themselves.

The pay stub requirement

When Congress revised the bankruptcy laws in 2005, it imposed a new requirement under Bankruptcy Code section 521(a)(1)(B)(iv) that debtors provide written verification of their current income by

filing “copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor.” Payment advices are typically pay stubs.

Bankruptcy Rule 1007(c) requires debtors to fulfill this requirement within 14 days after filing the petition. However, if the debtor fails to file the payment advices within 45 days of the filing date, then Code section 521(i)(1) provides for automatic dismissal.

Bankruptcy counsel typically file pay stubs with the bankruptcy court by ECF, and send copies to the trustee, at the same time the petition is filed or shortly thereafter.

The recent *Riffle* case

Stephen Riffle and his wife filed a routine Chapter 13 case in the Western District of New York in 2008. His attor-



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ney only filed the debtor’s last pay stub during the 60-day pre-petition period because that was the only pay stub that the debtor retained.

The pay stub contained the debtor’s earnings and deductions for the pay period and also stated the debtor’s year-to-date earning and payroll deductions in various categories.

In addition to filing this one pay-stub, the debtor also filed a chart entitled “Sales Earnings Report,” which had been issued by the debtor’s employer and showed the debtor’s gross earnings for each pay period from the beginning of the year. Debtor’s counsel believed that these two documents satisfactorily disposed of the payment advice requirement.

However, an aggressive creditor, Community Bank, disagreed, and after 45 days filed a motion asking the bankruptcy court to confirm that the case was dismissed for non-compliance with the

statute. The Chapter 13 trustee opposed the dismissal, arguing that the two documents that the debtor filed represented full compliance with the statutory requirement.

The bankruptcy court agreed with the debtor and trustee; the District Court affirmed, and so did the Second Circuit. *Community Bank v. Riffle (In re Riffle)*, no. 08-4440-bk (2d Cir. 08/09/10).

The Court of Appeals noted that it had not previously decided what obligations 521(a)(1)(B)(iv) imposes upon a debtor and further stated that “the statute, to put it mildly, is not a model of syntactical clarity. At least two grammatically valid readings of the statute are possible, each of which would place a different requirement on the debtor.”

The court determined that the statute was ambiguous and provided an analysis in which it dissected clauses and words, explored different grammatical meanings, discussed how certain words modified other words, and focused on how inter-

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