

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. MS 12-085

Bankruptcy Case No. 12-31480-HJB

**AMY IRENE ZUCKERMAN,
Debtor.**

**AMY IRENE ZUCKERMAN,
Appellant.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Henry J. Boroff, U.S. Bankruptcy Judge)**

**Before
Deasy, Kornreich, and Godoy,
United States Bankruptcy Appellate Panel Judges.**

Amy Irene Zuckerman, Pro Se, on brief for Appellant.

April 24, 2013

Per Curiam.

The debtor, Amy Irene Zuckerman, appeals pro se from the bankruptcy court's dismissal of her chapter 13 case for failure to comply with its prior orders and file all missing documents.

For the reasons set forth below, we **AFFIRM**.

BACKGROUND

In September 2012, the debtor filed a chapter 11 petition. Shortly thereafter, she converted her case to chapter 13.

On October 4, 2012, the bankruptcy court issued an Order to Update (the "October 4 Order") directing the debtor to file certain missing documents by October 18, 2012, including a statement of compliance with the credit counseling requirements set forth in § 109(h)(1),¹ and providing that "failure to file the requested documents may result in the dismissal of your bankruptcy case, if not filed as noted above." The debtor requested, and was granted, an extension of time to October 31, 2012, to file the missing documents.

Thereafter, the debtor filed some (but not all) of the missing documents, including a chapter 13 plan. On October 31, 2012, the bankruptcy court entered an order (the "October 31 Order") noting that the debtor had filed a chapter 13 plan without a certificate of service as required by MLBR Appendix 1, 13-4, and ordering her to file the missing certificate of service within 14 days. The October 31 Order also provided that "[f]ailure to comply with this order shall result in dismissal of the case pursuant to 11 U.S.C. § 1307(c)(1)."

¹ Unless expressly stated otherwise, all references to "Bankruptcy Code" or to specific statutory sections shall be to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. § 101, et seq.

On November 14, 2012, the bankruptcy court entered an Order of Dismissal, providing:

Due to the failure of the Debtor to comply with the Court's Orders of 10/4/12 and 10/31/12 the Debtor having failed to file all the required documents timely, it is hereby ordered that the above-entitled case be and hereby is DISMISSED.

The debtor filed a motion seeking to vacate the Order of Dismissal, which the bankruptcy court denied. This appeal followed.

JURISDICTION

A bankruptcy appellate panel is “duty-bound” to determine its jurisdiction before proceeding to the merits even if not raised by the litigants. See Boylan v. George E. Bumpus, Jr. Constr. Co., Inc. (In re George E. Bumpus, Jr. Constr. Co., Inc.), 226 B.R. 724, 725 (B.A.P. 1st Cir. 1998). A panel may hear appeals from “final judgments, orders, and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)].” Fleet Data Processing Corp v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). An order dismissing a chapter 13 case is a final, appealable order. Gonzalez-Ruiz v. Doral Fin. Corp. (In re Gonzalez-Ruiz), 341 B.R. 371, 375 (B.A.P. 1st Cir. 2006) (citation omitted). Accordingly, the Panel has jurisdiction to hear this appeal.

STANDARD OF REVIEW

A bankruptcy court's findings of fact are reviewed for clear error and its conclusions of law are reviewed *de novo*. See Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 269 (1st Cir. 2010). Appellate courts review an order dismissing a chapter 13 case for abuse of discretion. Howard v. Lexington Invs., Inc., 284 F.3d 320, 322-23 (1st Cir. 2002) (citations

omitted). “A bankruptcy court abuses its discretion if it ignores a material factor deserving of significant weight, relies upon an improper factor or makes a serious mistake in weighing proper factors.” Id. at 323 (internal quotations and citation omitted).

DISCUSSION

The bankruptcy court dismissed the debtor’s bankruptcy case for failure to comply with the October 4 and October 31 orders, and file all the required documents timely. The debtor primarily argues that the bankruptcy court should not have dismissed her case because she did, in fact, comply with the credit counseling requirements set forth in § 109(h)(1).² We need not decide whether the debtor complied with the requirements of § 109(h)(1), however, because dismissal of her case was warranted due to her failure to comply with the October 31 Order, which directed her to file a certificate of service for her chapter 13 plan, as required by MLBR Appendix 1, 13-4. The debtor does not explain or even address her failure to comply with that order.

Pursuant to MLBR Appendix 1, 13-4, a debtor is required to “cause a copy of the plan to be served by first class mail upon the chapter 13 trustee, all creditors of the debtor, all attorneys who have filed appearances and requested service of all pleadings, and other parties in interest” and must “file with the plan a certificate of service.” MLBR Appendix 1, 13-4. In the October 31 Order, the bankruptcy court noted that the debtor had failed to file the required certificate of service with her plan, and ordered her to do so within 14 days. The October 31 Order also

² Section 109(h)(1) requires debtors to receive credit counseling before they can be eligible for bankruptcy relief, except in certain situations. 11 U.S.C. § 109(h)(1). Debtors are required to file a certification of compliance with § 109(h)(1) within 14 days of filing a petition. 11 U.S.C. § 521(b)(1); Fed. R. Bankr. P. 1007(c).

warned the debtor that failure to comply would result in dismissal of her case pursuant to § 1307(c)(1). The bankruptcy court did just that after the debtor failed to file the required certificate of service within 14 days.

It was entirely appropriate for the bankruptcy court to have set and enforced a deadline in which the debtor must file a certificate of service for the chapter 13 plan. Section 105(a) provides that:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). This section gives a bankruptcy court general equitable powers to enforce the provisions of the Bankruptcy Code. The powers bestowed upon the court in § 105(a) include the equitable and discretionary power to dismiss a case sua sponte under § 1307(c)(1).³ See Howard, 284 F.3d at 323 (dismissing case for failure to comply with court order that resulted in delay to creditors); Bessette v. Avco Fin. Servs., Inc., 230 F.3d 439, 445 (1st Cir. 2000) (noting that “§ 105 provides a bankruptcy court with statutory contempt powers”).

³ Section 1307(c) provides, in pertinent part:

. . . [O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may . . . dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including -
(1) unreasonable delay by the debtor that is prejudicial to creditors; . . .

11 U.S.C. § 1307(c)(1).

Accordingly, the bankruptcy court did not err in dismissing the debtor's case for failure to comply with its October 31 Order.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the bankruptcy court's order.