

The document below is hereby signed. Dated: October 26, 2011.



A handwritten signature in black ink, appearing to read "S. Martin Teel, Jr.", written over a horizontal line.

S. Martin Teel, Jr.
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)
) Case No. 10-00559
ALICE HARRINGTON,) (Chapter 13)
)
Debtor.)

MEMORANDUM DECISION RE DEBTOR'S MOTION TO AMEND DISMISSAL ORDER

The debtor has filed a motion to amend the order that granted an unopposed motion to dismiss based on the debtor's failure to make plan payments (Dkt. No. 135). The debtor has also filed a supplement to the motion (Dkt. No. 137). The dismissal order was made with prejudice to the refiling of a bankruptcy case within 180 days after entry of the order. By her motion, the debtor seeks to make the dismissal a dismissal without prejudice, arguing that her failure to make plan payments was not willful.

I

Because the motion was filed more than 14 days after the entry of the dismissal order, the motion is one under Fed. R.

Civ. P. 60, not one under Fed. R. Civ. P. 59.¹ The debtor has not shown good cause for failing to oppose the motion to dismiss, and has not otherwise shown cause under Rule 60 for amending the order to make the dismissal one without prejudice.

II

In any event, even if the debtor had timely opposed the trustee's motion or had timely sought relief under Rule 59 and its more liberal standards, the court would still make the dismissal a dismissal with prejudice. There had been a motion for relief from the automatic stay in the case, and any voluntary dismissal would have been with prejudice. 11 U.S.C. § 109(g)(2). When the debtor failed to make plan payments, that necessitated that the case be dismissed unless the case were converted to another chapter. The debtor did not exercise her absolute right under 11 U.S.C. § 1307(a) to convert her case to chapter 7. She ought not evade § 109(g)(2) by having failed to take steps to convert her case, which would have prevented dismissal of the case. In other words, the dismissal was the equivalent of a voluntary dismissal because the debtor voluntarily elected not to

¹ Pursuant to Fed. R. Bankr. P. 9023, Fed. R. Civ. P. 59 generally applies in bankruptcy cases. Whereas litigants proceeding in the district court under the Federal Rules of Civil Procedure have 28 days within which to file a Rule 59 motion to alter or amend a judgment, under Fed. R. Bankr. P. 9023, parties in this court are required to file such motions within 14 days after entry of judgment.

