

The document below is hereby signed.

Signed: August 24, 2013



A handwritten signature in black ink, reading "S. Martin Teel, Jr.", is written over a horizontal line.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
JONATHAN EDWIN LILLY,)	Case No. 10-00868
)	(Chapter 11)
Debtor.)	Not for publication in
)	West's Bankruptcy Reporter

MEMORANDUM DECISION AND ORDER RE REQUEST
FOR DISCHARGE OF DEBTOR AND RE MOTION FOR FINAL DECREE

The debtor, Jonathan Edwin Lilly, has filed a *Request for Discharge of Debtor* (Dkt. No. 251) as well as a *Final Report and Motion for Final Decree* (Dkt. No. 250).

I

The *Request for Discharge of Debtor* must be denied. The debtor's confirmed plan was not a liquidating plan, and, accordingly, 11 U.S.C. § 1141(d)(3) does not apply here (which, if applicable, would require the debtor to file "a statement of completion of a course concerning personal financial management" under Fed. R. Bankr. P. 1007(b)(7) in order to obtain a discharge). However, 11 U.S.C. § 1141(d)(5) provides in relevant part:

In a case in which the debtor is an individual-

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

. . . .
(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522 (q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522 (q)(1)(A) or liable for a debt of the kind described in section 522 (q)(1)(B); and if the requirements of subparagraph (A) or (B) are met.

(Section 1141(d)(5)(B) deals with granting a debtor a so-called hardship discharge, and the debtor has not invoked that provision.) The debtor's *Request for Discharge* and his *Final Report and Motion for Final Decree* make clear that he has **not** completed plan payments, and he has not alleged any cause for entering a discharge despite that failure.¹ Accordingly, the debtor is not entitled to a discharge at this juncture.

In addition, his *Request for Discharge* does not address § 1141(d)(5)(C), which contemplates that a discharge in a chapter 11 case will be granted to a debtor who is an individual only

¹ This is not a case in which payments on all unsecured claims have been completed, but payments on mortgage obligations have not been completed, which might be cause for entering a discharge of the unsecured debts even though plan payments have not been completed. See *In re Belcher*, 410 B.R. 206, 217-18 (Bankr. W.D. Va. 2009); *In re Brown*, 2008 WL 4817505 (Bankr. D.D.C. Oct. 29, 2008).

after notice and a hearing. Here, the debtor gave no notice of the motion and of the opportunity to oppose the motion (such as to satisfy that requirement by reason of 11 U.S.C. § 102(1)).²

II

The debtor's *Final Report and Motion for Final Decree* show that there has been substantial consummation of the debtor's confirmed plan. Accordingly, the court may enter a final decree closing the case pursuant to Fed. R. Bankr. P. 3022 and the Advisory Committee Note thereto. See *Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.)*, 352 F.3d 671, 676, 678 (2d Cir. 2003). That will stop the running of quarterly fees owed to the United States Trustee, but to obtain a discharge once plan payments are completed, it will be necessary for the debtor to file a motion to reopen the case and pay the substantial fee for filing such a motion. Unless the debtor withdraws his *Motion*

² By way of analogy, chapter 13 imposes a similar requirement of notice and a hearing before a discharge may be granted, and this court's Local Official Form No. 11 (*Debtor's Motion for Entry of § 1328(a) Chapter 13 Discharge and Notice of Deadline and Opportunity to Object*) is used for obtaining a chapter 13 discharge. See LBR 4008-1. With modifications deleting provisions inapplicable in chapter 11, that form could be used to obtain a chapter 11 discharge after completing plan payments. The court has not promulgated a form for chapter 11 cases because the required motion would vary depending on whether § 1141(d)(3) does or does not apply. The Federal Rules of Bankruptcy Procedure do not specify the entities entitled to notice and a hearing regarding a motion for entry of a chapter 11 discharge for a debtor who is an individual, and in some circumstances it may be appropriate to limit notice (e.g., to the creditors listed under Rule 1007(d) and those who have requested to receive all notices in the case).

for Final Decree, I will enter a final decree closing the case subject to the debtor's right to file a motion to reopen the case in order to pursue a motion to obtain a discharge once he is able to show that he is entitled to a discharge under § 1141(d).

However, I recognize that the debtor may have anticipated receiving a discharge pursuant to his *Request for Discharge* that would avoid the necessity of filing a motion to reopen the case after it is closed (pursuant to his *Motion for Final Decree*) in order to obtain a discharge. If, to avoid the expense of a motion to reopen the case, the debtor would prefer to keep the case open (despite continuing to incur quarterly fees owed the United States Trustee), he may file a notice within 21 days of entry of this *Memorandum Decision and Order* withdrawing the *Final Report and Motion for Final Decree*. I will delay entering an order granting the *Motion for Final Decree* until the debtor has had an opportunity timely to file such a notice.

III

It is thus

ORDERED that the debtor's *Request for Discharge* (Dkt. No. 251) is DENIED without prejudice. It is further

ORDERED that the court will delay acting on the *Final Report and Motion for Final Decree* (Dkt. No. 250) until the debtor has had an opportunity within 21 days after entry of this *Memorandum Decision and Order* to file a notice withdrawing the *Final Report*

