

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re

CHARLES GRANNIS,

Case No. 02-33321-K

Debtor.

Chapter 7

**ORDER DISMISSING CHAPTER 7 CASE UNDER 11 U.S.C. § 707(a)(2) COMBINED WITH
RELATED ORDERS AND NOTICE OF THE ENTRY THEREOF**

In accordance with the provisions of the prior January 17, 2003 Order of this court and for the reasons discussed below, this chapter 7 case is hereby dismissed for cause under 11 U.S.C. § 707(a)(2) and FED. R. BANKR. P. 1017(b)(1).

The relevant background facts leading up to the entry of this case dismissal order may be briefly summarized as follows: On August 14, 2002, the above-named debtor, Charles Grannis ("Mr. Grannis"), filed an original, no-asset petition under chapter 7 of the Bankruptcy Code. The chapter 7 petition was not accompanied by the filing fees prescribed by 28 U.S.C. § 1930(a)(1) and (b) and FED. R. BANKR. P. 1006(a) (discussed more fully hereinafter). The only creditor listed by Mr. Grannis in this case is the "U.S. Government, 1600 Pennsylvania Ave., Washington, D.C." Mr. Grannis disputes that he owes this claim. More specifically, his Schedule F reflects that this claim was incurred on February 10, 1996, as follows:

No consideration...huge fines on handicap person +
no victim in false charge.

Mr. Grannis' Schedule F also lists and estimates the amount of the disputed claim of the United States as being \$123,856.¹

¹The court notes that certain fines, penalties or the like payable to a "governmental unit" are not subject to discharge. See 11 U.S.C. § 523(a)(7) and (13). Assuming arguendo and hypothetically that the only listed creditor's claim would be nondischargeable, a chapter 7 discharge, in reality, would be meaningless for such a debtor.

At the time of the filing of the chapter 7 petition on August 14, 2002, Mr. Grannis was incarcerated and subsequently released to a half-way house. Apparently, he is currently incarcerated. Not having complied with his proposed payment of the filing fee in installments pursuant to FED. R. BANKR. P. 1006(b)(1), on August 14, 2002, Mr. Grannis filed a request to waive the case filing fee to allow him to proceed *in forma pauperis*. This request was denied by an order of the court dated August 14, 2002. No appeal was taken from the August 14, 2002 Order. Mr. Grannis filed a second request to waive the case filing fee to allow him to proceed *in forma pauperis* on January 14, 2003. On January 17, 2003, the court entered an order denying Mr. Grannis' second request to waive the prescribed case filing fee under 28 U.S.C. § 1930(a)(1) to allow him to proceed *in forma pauperis* in accordance with 28 U.S.C. § 1915 in order to eventually obtain a chapter 7 discharge. The January 17, 2003 Order, *inter alia*, additionally advised Mr. Grannis that his failure to pay the filing fee in installments within the time fixed by the Federal Rules of Bankruptcy Procedure and pursuant to the court order may result in a dismissal of his case without further notice. 11 U.S.C. § 707(a)(2).

The court, on its own initiative and for cause shown, extended the time until February 10, 2003 (over 180 days after August 14, 2002 - the petition date) for Mr. Grannis to pay the \$200.00 case filing fee. FED. R. BANKR. P. 1006(b)(2), *infra*. This extension of the time to pay the required filing fee was combined with an additional admonition that "unless the debtor [Mr. Grannis] pays the Bankruptcy Court Clerk the prescribed filing fee on or before February 10, 2003, the case shall be dismissed without further notice." FED. R. BANKR. P. 1006(b)(2), *infra*. The Chapter 7 trustee was sent a copy of the January 17, 2003 Order. FED. R. BANKR. P. 1017(b)(1). On January 23, 2003, Mr. Grannis filed a notice of appeal arising out of the court's January 17, 2003 Order denying him *in forma pauperis* relief. Mr. Grannis' notice of appeal raised constitutional issues regarding the required payment of the case filing fee under 28 U.S.C. § 1930(a)(1) as a

precondition of the granting of a discharge. Although the appeal of the second order denying Mr. Grannis *in forma pauperis* relief is currently pending before the Bankruptcy Appellate Panel (“BAP”), no stay of that Order has been sought by Mr. Grannis or granted by the court. FED. R. BANKR. P. 8005. Pursuant to 28 U.S.C. § 2403, it parenthetically is noted that the court certified the constitutional issue raised by Mr. Grannis regarding the requirement of the payment of the prescribed case filing fee under 28 U.S.C. § 1930(a)(1) to the United States Attorney General to permit the United States to intervene, if it desires to do so, for argument or otherwise, on the question of constitutionality of the statutory filing fee requirement under 28 U.S.C. § 1930(a)(1).

A debtor ordinarily must pay to the bankruptcy court clerk a case filing fee of \$200.00 when a chapter 7 petition is filed.² If a debtor is unable to pay the filing fee at one time, an application for permission to pay in installments may accompany the petition.³ The bankruptcy courts currently have no statutory power to waive the prescribed case filing fee under 28 U.S.C. § 1930(a) in order to allow a debtor to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 to obtain a discharge of debts.⁴ Specifically, 28 U.S.C. § 1930(a) provides as follows:

Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following fees.⁵ (emphasis added).

* * *

²28 U.S.C. § 1930(a)(1) (\$155); the Judicial Conference Bankruptcy Court Miscellaneous Fee Schedule Item No. 8 (\$30.00) and Item No. 9 (\$15.00) accompanying 28 U.S.C. § 1930(b); FED. R. BANKR. P. 1006(a).

³28 U.S.C. § 1930(a); FED. R. BANKR. P. 1006(b).

⁴See *United States v. Kras*, 409 U.S. 434 (1973)(The Court reasoned that a debtor has no constitutional right to obtain a discharge of one’s debts in bankruptcy.) A discharge in bankruptcy is a privilege and not a right. *In re Tabibian*, 289 F.2d 793, 795 (2nd Cir. 1961); *In re Krohn*, 886 F.2d 123 (6th Cir. 1989).

⁵See Items(15) and (21) of the Judicial Conference Bankruptcy Court Miscellaneous Fee Schedule accompanying 28 U.S.C. § 1930(b); see also 28 U.S.C. § 1930(c). The aggregate prescribed bankruptcy appeal filing fee is currently \$105.00.

It is noted that the law is well settled that a statute of the United States Congress (e.g., 28 U.S.C. § 1930(a)) enjoys a presumption of constitutionality. See, among others, *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976). Any analysis of the constitutionality of a statute begins with the presumption that the statute is constitutionally valid. *U.S. v. Nat'l Dairy Prods. Corp.*, 372 U.S. 29, 32 (1963); *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981). It is now well established that the legislative acts adjusting the burdens and benefits of economic life come to the court with the presumption of constitutionality and that the burden is on the complainant to establish that the legislature has acted in an arbitrary and irrational way. *Ferguson v. Skrupal*, 372 U.S. 726 (1963); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487-488 (1955); see also *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976). Indeed, it is fundamental that a presumption exists in favor of the constitutionality of an act of the Congress. *Regan v. Time, Inc.*, 468 U.S. 641 (1984); *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981). Mere uncertainty as to the constitutionality of a statute does not rebut that presumption. See, e.g., *In re Lombard-Wall, Inc.*, 44 B.R. 928 (Bankr. S.D.N.Y. 1984).

The court may dismiss a chapter 7 case for failure to pay the prescribed case filing fees required under chapter 123 of title 28. 11 U.S.C. § 707(a)(2); FED. R. BANKR. P. 1017(b)(1). Compare, e.g., *In re Hansen*, 39 B.R. 68 (Bankr. D. Kan. 1984); *In re Latham*, 271 F.538 (N.D.N.Y. 1921).

FED. R. BANKR. P. 1006 provides, in relevant part, as follows:

(a) General requirement

Every petition shall be accompanied by the filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) Payment of filing fee in installments

(1) Application for permission to pay filing fee in installments

A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on application

Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. (emphasis added).

Pursuant to FED. R. BANKR. P. 1006(b)(2), the last installment payment must be paid within 180 days after the commencement of the case. The petition date (*i.e.*, commencement date) in this case is August 14, 2002. Actually, Mr. Grannis has paid nothing in this case toward the \$200.00 filing fee. Rule 9006(b)(3) of the Federal Rules of Bankruptcy Procedure explicitly limits any extension of time to the extent and under the conditions stated in FED. R. BANKR. P. 1006(b)(2). There is no basis under the circumstances for extending the time for payment of the filing fee beyond the 180-day period referred to in Rule 1006(b)(2). The Advisory Committee Note accompanying FED. R. BANKR. P. 1006 states, in relevant part, that: "Prolonging the period beyond 180 days after the commencement of the case causes undesirable delays in administration."

By virtue of the foregoing and consideration of the case record as a whole, this chapter 7 case is hereby dismissed under 11 U.S.C. § 707(a)(2); the relevant provisions of the

January 17, 2003 Order; and the procedural provisions of FED. R. BANKR. P. 1017(b)(1).⁶ The dismissal of the main bankruptcy case generally results in the dismissal of all remaining adversary proceedings and contested matters that are pending at the time. In appropriate circumstances, however, the case dismissal order may expressly provide for the retention of jurisdiction of a particular proceeding or proceedings, notwithstanding the case dismissal. Factors commonly involved in the decision to retain jurisdiction of pending proceedings include, for example, judicial economy, fairness, and convenience to the parties. The retention of such jurisdiction is within the bankruptcy court's sound discretion. See, e.g., *In re Querner*, 7 F.3d 1199 (5th Cir. 1993); *In re Carraher*, 971 F.2d 327 (9th Cir. 1992); *In re Morris*, 950 F.2d 1531 (11th Cir. 1992); and *In re Smith*, 866 F.2d 576 (3d Cir. 1989). Simply put, this is not the appropriate case for the court to retain jurisdiction of the various pending proceedings that Mr. Grannis has filed against the United States. Under the circumstances existing here, there are no compelling reasons why this bankruptcy court should retain jurisdiction of the pending civil actions Mr. Grannis has filed in this no-asset chapter 7 case against the United States.⁷ Non-bankruptcy courts are available and more appropriate to address and resolve the non-bankruptcy issues raised by Mr. Grannis.

The discharge hearing and numerous case and proceeding status conferences currently scheduled to be conducted by the court on March 4, 2003, arising out of the multiple proceedings filed by Mr. Grannis in this case against the United States are hereby canceled and stricken from the calendar without legal prejudice to any party in interest. For informational purposes, the Bankruptcy Court Clerk is directed to notify the Clerk of the BAP that this chapter 7 case has been dismissed for Mr. Grannis' failure to pay the prescribed filing fee by sending a copy

⁶See 11 U.S.C. § 102(1) regarding the dynamic concept of "after notice and a hearing" (or a similar phrase) and also the relevant provisions of the January 17, 2003 Order of this court.

⁷For example, Mr. Grannis, *inter alia*, has filed a motion seeking an order to disallow or avoid the scheduled debt of the United States. See the doctrine of collateral estoppel (*i.e.*, issue preclusion); *In re Bursack*, 65 F.3d 51, 53 (6th Cir. 1995); *In re Calvert*, 105 F.3d 315 (6th Cir. 1997).

of this case dismissal order and notice thereof along with a form informational letter to the BAP. The Bankruptcy Court Clerk also is directed not to formally close this chapter 7 case at this time awaiting the final outcome of the pending appeal discussed above. *Compare* 11 U.S.C. § 350(a); FED. R. BANKR. P. 5010.

Based on the foregoing and consideration of the case record as a whole,

IT IS SO ORDERED AND NOTICE IS HEREBY GIVEN:

BY THE COURT

DAVID S. KENNEDY
CHIEF UNITED STATES BANKRUPTCY JUDGE

DATE: February 12, 2003

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