

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION**

IN RE:	)	CASE No.	20-21036 (JJT)
	)		
NASSIR MOHAMED ALSUBAI	)	CHAPTER	7
c/o MOJAHID ALSUBAI, POA,	)		
Debtor.	)	RE: ECF Nos.	34, 37, 38, 47, 48
	)		

**RULING DISMISSING THE DEBTOR’S CASE WITH PREJUDICE  
AND WITH A TWO-YEAR BAR TO REFILE**

Mojahid Alsubai, acting through a power of attorney on behalf of his brother, Nassir Mohamed Alsubai (the “Debtor”), and proceeding through counsel, filed the instant Chapter 7 petition on August 19, 2020 (ECF No. 1). At the time of the filing, the Debtor was incarcerated (and continues to be as of the date of this Ruling). The first Section 341 meeting of creditors was scheduled for September 28, 2020 (ECF No. 10), but was continued to October 5, 2020, because the Debtor did not appear and the Office of the United States Trustee had not approved the aforementioned power of attorney. On October 5, 2020, the 341 meeting of creditors was again continued due to the non-appearance of the Debtor (ECF No. 11).

The 341 meeting was ultimately held on October 19, 2020, whereat the Debtor was able to appear remotely. At the 341 meeting, neither the Debtor, nor his counsel, produced a copy of the criminal charges for the Chapter 7 Trustee to review. In fact, Debtor’s counsel later acknowledged to the Court that, at that juncture in the case, he had not seen or reviewed the criminal complaints (although he was aware of their existence).<sup>1</sup> On that same day, the Chapter 7

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<sup>1</sup> 11 U.S.C. § 707(b)(4)(C) provides: “The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and (ii) determined that the petition, pleading, or written motion—(I) is well grounded in fact; and (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).”

Trustee filed his Final Report indicating that there were no non-exempt assets available for distribution and that the case had been fully administered (*see* ECF No. 12). The Court further notes that, as of the closing of the 341 meeting of creditors and the filing of the Chapter 7 Trustee's Final Report, no amendments to the Debtor's schedules or to the notice matrix had been made.

The following day, on October 20, 2020, the United States District Court for the District of Connecticut entered an Order approving a recommended agreement regarding Debtor's counsel, Attorney Syed Zaid Hassan,<sup>2</sup> which provided that Attorney Hassan was suspended from practicing before the United States District Court for the District of Connecticut for a period of 25 days, retroactive to January 30, 2020, the date upon which the state-court suspension began. While the District Court's Order further provided that Attorney Hassan could apply for readmission to the Bar of this Court, as of October 27, 2020, Attorney Hassan had failed to do so, and his appearance in the Debtor's case was therefore terminated.

A hearing was held on November 12, 2020, to provide the Debtor an opportunity to consider how to proceed with his case in light of counsel's suspension.<sup>3</sup> At that hearing, a status conference was scheduled for December 10, 2020, for the purpose of assisting the Court in better understanding the contours of the case, what effect Attorney Hassan's suspension would have on its administration and what the underlying circumstances were that necessitated a power of attorney.

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Moreover, 11 U.S.C. § 707(b)(4)(D) provides: "The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect."

<sup>2</sup> *See* Case No. 3:20-gp-00003, ECF No. 4.

<sup>3</sup> At this hearing, the Debtor's brother appeared before the Court, having just been alerted to the suspension of Debtor's counsel.

On November 20, 2020, Attorney Hassan was reinstated and subsequently appeared before the Court at the December 10, 2020 status conference as counsel for the Debtor. Thereat, Attorney Hassan disclosed that the Debtor was incarcerated and awaiting trial on multiple charges of sexual assault. Attorney Hassan further disclosed that his access to the Debtor was intermittent and difficult due to the Debtor's incarceration, the current restrictions on visiting inmates on account of Covid-19 and because the Debtor had no access to a computer or to his books and records while incarcerated.

At the December 10, 2020 status conference, the Court inquired as to, among other things, the purpose of the present bankruptcy, whether any of the victims of the alleged sexual assaults were on notice of the filing, and whether there were additional impediments that were likely to prevent this case from moving forward on account of the Debtor's incarceration.<sup>4</sup> Moreover, the Court found it anomalous that a debtor with primarily credit card debt and no real administrable assets, would be seeking bankruptcy protection prior to any adverse determinations in his criminal proceedings (while he awaited trial), all while a statewide foreclosure moratorium was in effect. Critically, in response to the Court's question regarding notice to the victims, counsel indicated that no such notice had been provided.

The United States Trustee ("UST") also expressed concern at the December 10, 2020 status conference regarding the pending charges against the Debtor, especially given the apparent lack of a proper bankruptcy purpose for the case. The UST indicated that his review of the Superior Court criminal docket revealed that the Debtor was facing some twenty-four felony

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<sup>4</sup> Such as the Debtor's inability to complete the financial education requirement. *See* Fed. R. Bankr. P. 1007(c) (requiring that a Chapter 7 debtor file a statement of completion within 60 days from the first date set for the meeting of creditors). In this case, that period began to run on September 28, 2020.

charges pertaining to the sexual of assault of minors.<sup>5</sup> The UST argued that the Debtor had completely ignored the criminal charges, the victims and the obvious implications of failing to notify the victims or include them as potential creditors—a matter which the Court acknowledged was further complicated by the fact that the identities of the minor victims were protected by statute, as well as the fact that the victims’ participation in this case may implicate the Debtor’s 5<sup>th</sup> amendment privilege against self-incrimination.

In response to the serious concerns raised by the Court and the UST, Attorney Hassan represented to the Court that he would promptly notice the State’s Attorney and any Victim’s Advocate before the next hearing. Counsel was warned that if the fundamental substantive and procedural deficiencies were not addressed in a timely fashion, it was likely that the Court would issue an order to show cause.

The Court thereafter granted the Debtor’s request for additional time to address these challenges and to consider whether these challenges could be rectified at all. The Court set a continued status conference on the matter for January 6, 2021, whereat the aforementioned issues would be addressed in greater detail. The Court further requested that the Chapter 7 Trustee attend the January 6, 2021 status conference due to concerns that the Chapter 7 Trustee’s Final Report was premature in light of the disclosures made by Debtor’s counsel and the UST.

At the January 6, 2021 status conference, despite the Court’s prior admonitions, Debtor’s counsel admitted that he had failed to provide notice to the State’s Attorney or the Victim’s Advocate, and that the victims in the pending criminal matters had still not been notified about the Debtor’s bankruptcy. He also acknowledged that the Debtor had not amended his schedules

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<sup>5</sup> According to the UST, it gave him pause that this case had no discernable bankruptcy purpose and caused him to look further into the circumstances of the Debtor, which ultimately resulted in the discovery of the aforementioned criminal charges. The Court notes that these same facts did not so impress the Chapter 7 Trustee.

to account for the victims as potential creditors of the estate. When asked by the Court whether he was aware of those charges as of the time of filing, counsel indicated that he was.

Additionally, when asked by the Court what inquiry was made into these affairs, the Chapter 7 Trustee openly acknowledged that once he learned of the Debtor's incarceration he did not inquire further and rested on the Debtor's representation that all of his assets and liabilities were correctly represented on his schedules. At the conclusion of that status conference, the Court issued an Order striking the Trustee's Final Report (ECF No. 37), as well as an Order to Appear and Show Cause as to why the case should not be dismissed as a bad faith or abusive filing (ECF No. 38).<sup>6</sup>

Section 707(a) of the Bankruptcy Code authorizes a bankruptcy court to dismiss a case under Chapter 7 for "cause." While Section 707(a) lists three categories of acts that constitute "cause," that list is not exhaustive. Section 707(b) of the Bankruptcy Code, on the other hand, permits the dismissal of a Chapter 7 case filed by an individual with primarily consumer debts if granting relief to the debtor "would be a substantial abuse of the provisions" of Chapter 7. 11

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<sup>6</sup> The Order to Show Cause specifically provides:

"[The Debtor] and counsel for the Debtor, Attorney S. Zaid Hassan, are ORDERED TO APPEAR AND SHOW CAUSE as to why this Chapter 7 Case should not be dismissed as a bad faith or abusive bankruptcy filing with a two year bar in light of the following:

1)The Debtor's abject failure to schedule material claims or afford notice of these proceedings to the alleged victims or their parent or guardian, if minors, in his pending criminal proceedings and appropriate State advocates, the presiding State Court Judge on this case(s) and the lead prosecutor(s); 2)The Debtor's counsel failure to advise the Chapter 7 Trustee of the existence of these alleged victims and potential claims or to appropriately amend the Debtor's schedules; 3)The existence of an improper bankruptcy purpose, bad faith or substantial abuse related to this filing; 4)The possible impediments of the 5th Amendment privilege against self-incrimination to addressing the claims and identity of the alleged victims in these proceedings; and 5)The known impediments of the Debtor to the completion of the Financial Education module and cooperation with the administration of the Bankruptcy Estate requisite to a bankruptcy discharge. Debtor's counsel is hereby ORDERED AND DIRECTED to and shall forthwith file upon this docket a copy of the criminal complaint(s), indictment(s) and any judicial rulings in the case(s), particularly those addressed to the existence of probable cause, bail, the number of victims, duration of the offenses, the terms of the current incarceration or the entry of protective orders. . . .

"The Debtor's counsel shall promptly serve a copy of this Order upon the lead prosecutor(s), the victims' advocate and cause its posting by defense counsel upon the docket of the pending criminal case(s). A certificate of such service and compliance shall be duly filed by Debtor's counsel upon this docket." ECF. No. 38.

U.S.C. § 707(b). Whether substantial abuse exists is established by the totality of the circumstances. *See In re Kornfield*, 164 F.3d 778, 781 (2d Cir. 1999); *In re Colgate*, 370 B.R. 50, 54 (Bankr. E.D.N.Y. 2007).

Furthermore, while the dismissal of a case is generally without prejudice, § 349(a) “grants a bankruptcy court the authority to dismiss a case with prejudice to a subsequent filing of any bankruptcy petition.” *In re Casse*, 219 B.R. 657, 662 (Bankr. E.D.N.Y. 1998), *subsequently aff’d*, 198 F.3d 327 (2d Cir. 1999). Where there is sufficient cause, the imposition of a dismissal with prejudice under the authority of Section 105(a) and Section 349(a) is necessary to prevent the abuse. *See In re Smigelski*, 2012 WL 1569617, at \*2 n.4 (Bankr. D. Conn. 2012) (“While there is clear authority under § 105(a), courts have also used § 349 . . . to implement sanctions for abusive bankruptcy agendas. Although [S]ection 349 establishes a presumption of non-prejudicial dismissal except where [Section] 109(g) explicitly imposes prejudice, it allows the court to rebut that presumption and attach prejudice to the dismissal order where ‘cause’ exists.”).

Accordingly, after notice and a hearing on the Court’s Order to Show Cause (*see* ECF No. 49), the Court hereby finds that, pursuant to 11 U.S.C. §§ 105(a), 349(a), 707(a), 707(b) and 727(a)(4), cause exists, on account of the improper and abusive purpose apparent under the circumstances, to dismiss the Debtor’s case with a two-year bar to refiling. *See In re Casse*, *supra*, 219 B.R. at 662.

The Debtor’s utter lack of candor and abject failure to list and notice material creditors, in addition to material omissions and/or his affirmative concealment of material facts regarding the pending criminal proceedings, is severely prejudicial to unnamed and unnoticed victims and is violative of fundamental bankruptcy principles. *See In re Carlton*, 211 B.R. 468,478 (Bankr. W.D.N.Y. 1997), *aff’d sub nom. Kornfield v. Schwartz*, 214 B.R. 705 (W.D.N.Y. 1997), *aff’d sub*

*nom. In re Kornfield*, 164 F.3d 778 (2d Cir. 1999). While this is a no asset case, the failure to provide notice to the victims of the Debtor's allegedly criminal conduct does not diminish those individuals' rights to confrontation or their right to seek relief in the form of a Section 727 or Section 523 action against the Debtor. Moreover, the Court has provided the Debtor ample opportunity to rectify the deficiencies pertaining to notice and his failure to include material creditors on his schedules. The Debtor has, nonetheless, failed to act with any discernable urgency or dispatch in addressing these fundamental deficiencies. The Debtor's inability to participate and respond to the material concerns of the Court, in part because of his 5th amendment privilege and incarceration, further poses material impediments to the administration of this case and suggests that, under these circumstances, it does not have a proper home in bankruptcy.

In light of the aforementioned, it is hereby

**ORDERED:** Pursuant to 11 U.S.C. §§ 105(a), 349(a), 707(a), 707(b) and 727(a)(4), the Debtor's case is **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED:** Pursuant to Sections 349(a) and 105(a), the Debtor is barred from filing for relief under any chapter of the Bankruptcy Code, in any bankruptcy court, for a period of not less than two (2) years from the date of entry of this Ruling.

With respect to the Court's Order to Show Cause, the Court hereby retains jurisdiction and reserves judgment on whether additional sanctions should enter against Debtor's counsel, pending further proceedings before the Court.

**IT IS SO ORDERED** at Hartford, Connecticut this 28<sup>th</sup> day of January 2021.

*James J. Tancredi*  
United States Bankruptcy Judge  
District of Connecticut