

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JUDGE HERB ROSS (Recalled)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

In re

KAREN LOUISE VERNON and LONNIE
GENE VERNON,

Debtor(s)

Case No. A12-00598-HAR
In Chapter 7

**MEMORANDUM DENYING WAIVER OF
CREDIT COUNSELING REQUIREMENT
AND SETTING DATE FOR DISMISSAL IF
NO OPPOSITION IS FILED**

The debtors filed a chapter 7 without an attorney. They indicate they are both in jail. No certificate of credit counseling was filed with the bankruptcy petition; this is normally one of the requirements, unless excused.¹ I will order that this case be dismissed unless debtors file an opposition to dismissal by **Wednesday, October 24, 2012**.

In their petition, they indicate that no certificate is required because they are incarcerated.² The form indicates the request to be excused from the requirement requires a separate motion, but none was filed. Nor have they supplied the information required to explain the right to a waiver either under 11 USC § 109(h)(3) or § 109(h)(4). As part of the requirement to qualify for a waiver, a debtor must generally file a certificate with the court, but may be excused under § 109(h)(3). One of the requirements of § 109(h)(3) is that the certificate:

¹ 11 USC § 109(h).

² Docket No. 1, page 6.

1 (ii) states that the debtor requested credit counseling services from an
2 approved nonprofit budget and credit counseling agency, but was unable to
3 obtain the services referred to in paragraph (1) during the 7-day period
4 beginning on the date on which the debtor made that request;³

5 If the debtors did not seek to get credit counseling at all, this seems like an insurmountable
6 burden to salvage the pending chapter 7 case. I can commiserate with debtors plight – being
7 incarcerated and having to comply with this provision – but many courts have not allowed
8 debtors to avail themselves of the fact of incarceration alone as waiving the credit counseling
9 requirement.⁴

10 Also, if debtors' claim they are exempt from filing the credit counseling certificate because
11 their incarceration is a "disability" under § 109(h)(4), bankruptcy courts have almost universally
12 rejected this as a method of escaping the credit counseling requirement.⁵

13 Some other things caught my attention about this case, and I mention them now, without
14 proposing to rule upon them:

- 15 ● the mailing matrix only contains the names of 3-4 creditors, excluding, e.g., the
16 IRS;
- 17 ● if the IRS's lien on debtors' residence, is the result of "a tax lien, notice of which is
18 properly filed"⁶, that lien probably primes a debtor's exemption rights; in other
19 words, bankruptcy may not protect the debtors' home from a properly filed IRS
20 lien.

21
22
23 ³ 11 USC §109(h)(3)(A)(ii)

24 ⁴ *See*, footnote 5.

25 ⁵ 11 USC § 109(h)(4); In re Anderson, 397 B.R. 363, 366 (6th Cir. BAP 2008).

26 ⁶ 11 USC § 522(c)(2)(B); In re Walkup, 183 B.R. 884, 888 (Bankr. E.D. Cal. 1995).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October 10, 2012

/s/ Herb Ross
HERB ROSS
U.S. Bankruptcy Judge

Serve:
Debtors [mail to each separately]
Richard Pomeroy, Asst. US Attorney
Larry Compton
US Trustee - Anchorage
Case Manager

MEMORANDUM DENYING WAIVER OF CREDIT
COUNSELING REQUIREMENT AND SETTING DATE
FOR DISMISSAL IF NO OPPOSITION IS FILED