

APR 25 2006

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

6 In re: 7 SCOTT LEE SHIRE aka SETH LEE 8 SERAPH, 9 _____ Debtor.)))))	Chapter 7 No. 4-06-00383-EWH MEMORANDUM DECISION (Opinion to Post)
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10 On April 21, 2006, Scott L. Shire aka Seth Lee Seraph (“Movant”) filed a motion for/application
 11 to waive credit counseling requirement seeking a waiver under 11 U.S.C. § 109(h)(4) of both the pre-
 12 filing credit counseling certificate requirement of § 1090(h)(1) and the requirement that he complete a
 13 financial management class prior to entry of a discharge pursuant to 11 U.S.C. § 727(a)(11). The grounds
 14 for seeking the waiver is that the Movant is incarcerated at the Arizona Department of Corrections and
 15 has no access to the agencies certified by the Office of the United States Trustee to provide either credit
 16 counseling or financial management classes.

17 Section 109(h)(4) defines “incapacity” as being mental illness or mental deficiency which is so
 18 severe that it makes it impossible for a debtor to make rational decisions regarding his or her financial
 19 responsibility. The statute defines “disability” as a physical impairment that makes it impossible for a
 20 debtor, after reasonable effort, to participate in an in-person, telephone or Internet credit counseling. 11
 21 U.S.C. § 109(h)(4).

22 Movant’s application demonstrates that he is physically restrained and, therefore, has no access
 23 to the resources that would make it possible for him to obtain either credit counseling or to complete a
 24 financial management class. However, there is no evidence that he has any physical impairment or that
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1 he has a mental illness or mental deficiency which makes it impossible for him to make rational decisions
2 regarding his financial responsibilities. Accordingly, the Movant's request for a waiver must be denied.

3 The court is well aware that the outcome in this case means that most prisoners will be unable to
4 obtain relief under the Bankruptcy Code. The Movant appears to be judgment proof, since he has no
5 assets.¹ Presumably, he will be able to file for bankruptcy upon his release from jail. In any event, the
6 requirements of 11 U.S.C. § 109(h)(1) are clear and unambiguous. It is simply not open to the court to
7 depart from the statute's express terms. See In re Wallert, 332 B.R. 884 (Bankr. D. Minn. 2005); In re
8 Cleaver, 333 B.R. 430 (Bankr. S.D. Ohio 2005); In re Fields, 2005 WL 3725619, at *5-6 (Bankr. E.D.
9 Tenn., Dec. 9, 2005); In re Sosa, 2005 WL 3627817, at *2 (Bankr. W.D. Tex., Dec. 22, 2005).
10 Accordingly, this court cannot interpret the statute to include an exception to the requirements of
11 11 U.S.C. § 109(h)(1) and 727 (a)(11) for incarcerated individuals.

12 Because the Movant is not entitled to a waiver under § 109(h)(4) and because he is unable to meet
13 the requirements of § 109(h)(1), his case must be dismissed. An order consistent with this Memorandum
14 Decision will be entered this date.

15 DATED this 25th day of April, 2006.

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18 EILEEN W. HOLLOWELL
UNITED STATES BANKRUPTCY JUDGE

19 COPIES of the foregoing mailed this
20 25th day of April, 2006, to:

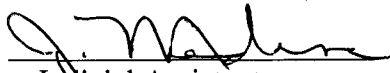
21 Scott Lee Shire aka Seth Lee Seraph
22 Arizona State Prison-Eyman/Cook
23 Bed #1-C-29
24 PO Box 3200
25 Florence, AZ 85232
26 Debtor

¹ The Statement of Affairs and the Debtor's Schedules of Assets and Liabilities indicates that he currently has no assets and has approximately \$34,000.00 in unsecured debt.

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By 
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