

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
JOSEPH GERALD SHADDY,) CASE NO. BK78-0-920
)
BANKRUPT)

MEMORANDUM OPINION

Before me is an application to reopen the bankruptcy case filed by Robert E., Mildred A. and Charles R. Keigley. The application alleges that the voluntary petition in this matter was filed July 31, 1978, and the case was closed on October 30, 1978. The application further alleges that applicants sent a letter dated November 6, 1978, to the clerk of this Court which enclosed a motion to enlarge time for filing an application to determine dischargeability together with an application to determine dischargeability. I gather from attachments to the application that all of the documents initially received were returned to the applicants' attorney with the notation that the case had been closed. Thereafter, on January 17, 1979, the present application to reopen the bankruptcy case was received together with a check in the amount of \$40.00 payable to the Clerk of the Court.

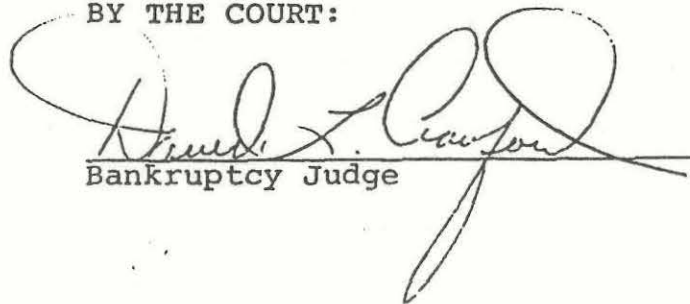
Bankruptcy Rule 906 contemplates the extension of time based upon applications filed outside of the deadline if there is a sufficient showing of "excusable neglect."

The principal argument of the applicants in justification for their failure to file their dischargeability complaint within the appropriate time is that they sent a copy of an application to determine dischargeability to the trustee in bankruptcy with the suggestion that he might be the proper person to investigate and file any objections to dischargeability. I am aware of no statutory authority or duty on behalf of a trustee in bankruptcy to litigate the issues of nondischargeability of debts on behalf of certain creditors. In general, the trustee's duties are to collect assets for the benefit of unsecured creditors. It is true that he has a statutory duty at times to oppose the granting of the discharge under §14 of the Act. However, there is no similar duty under §17 of the Act. In addition, I am unaware of any jurisdiction whose practice is to permit the trustee in bankruptcy to prosecute dischargeability complaints.

The language "excusable neglect" in the bankruptcy rule previously quoted is not to be confused with the more general term "neglect". Excusable neglect has been held in this jurisdiction to mean something quite apart from simple neglect. See Ledwith v. Storkan, 2 F.R.D. 539 (D. Neb. 1942) (Judge Delehant). Based upon the showing here, I conclude that there is an insufficient showing to constitute excusable neglect. A separate order is entered in accordance with the foregoing.

DATED: May 2, 1979.

BY THE COURT:



Bankruptcy Judge

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