

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: KODY KRUMMEL, Debtor

**No. 5:15-bk-72956
Ch. 13**

**ORDER DENYING MOTION TO EXTEND DEADLINE TO FILE SCHEDULES
AND
DISMISSING CASE PURSUANT TO 11 U.S.C. § 521(i)**

Before the Court is the debtor's *Second Motion to Extend Deadline to File Schedules* that was filed by the debtor on January 4, 2016. Because the motion was filed more than 45 days after the date of the filing of the petition, the Court has no discretion to enlarge the time allowed to file the debtor's schedules. 11 U.S.C. § 521(i)(3). Further, because the debtor failed to file all of the information required under § 521(a)(1) within 45 days after the date of the filing of the petition, the Court has no discretion but to dismiss the case effective on the 46th day post-petition. 11 U.S.C. § 521(i)(1); *In re Calhoun*, 359 B.R. 738, 740 (Bankr. E.D. Mo. 2007).

In 2005, with the enactment of BAPCPA, Congress stated that a case was to be "automatically dismissed" effective on the 46th day after the date the petition was filed if the debtor failed to file all of the information required in § 521(a)(1) within 45 days from the filing of the petition. In this case, the debtor filed a skeletal petition on November 18, 2015, but did not file the required schedule of assets and liabilities, schedule of income and expenses, or a statement of the debtors' financial affairs, among other deficiencies. On November 19, 2015, the Court entered its *Order of Deficiencies* (Doc. 5), which listed the deficient documents and gave the debtors until December 2, 2015, to file the deficient documents. On November 30, 2015, the debtors requested additional time—until January 4, 2016—to file the deficient documents. The Court granted their request and entered its order on December 3, 2015. (Doc. 6.) The 45th day from the filing of the debtors' petition was January 2, 2016.

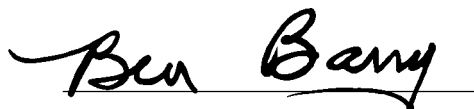
Congress contemplated the need for additional time beyond the initial 45 days to file deficient documents and wrote into BAPCPA two code provisions to provide for that additional time. Subsection 521(i)(3) is the relevant provision in this case and states that “upon request of the debtor *made within 45 days after the date of the filing of the petition* . . . the court may allow the debtor an additional period of not to exceed 45 days to file the information required . . .” 11 U.S.C. § 521(i)(3).¹ In the case before the Court, the debtors did not file their motion for additional time until after the initial 45 days had run. The requirement to file a request to extend time within 45 days is jurisdictional and not within the discretion of the Court. *See, e.g., American Farm Lines v. Black Ball*, 397 U.S. 532, 539 (1970) (Harlan, J. concurring) (“Nor do I find it at all anomalous that this Court on occasion waives the time limitations imposed by its own Rules and yet treats time requirements imposed by statute as jurisdictional. As a matter of statutory interpretation, the Court has not presumed the right to extend time limits specified in statutes where there is no indication of a congressional purpose to authorize the Court to do so. Because we cannot ‘waive’ congressional enactments, the statutory time limits are treated as jurisdictional.”) Congress has stated in the statute the specific requirements to obtain an extension of time beyond the 45 days and those requirements were not met in this case. Hence, the Court has no discretion but to deny the debtors’ request for additional time to file their deficient schedules.²

Likewise, because the debtors failed to file all of the information required under § 521(a)(1) within 45 days after the date of the filing of the petition, the Court has no discretion but to dismiss the case effective on the 46th day post-petition—January 3, 2016. 11 U.S.C. § 521(i)(1).

¹ The other subsection, § 521(i)(4), contemplates the trustee filing a motion before the expiration of the allowed time requesting the court to decline to dismiss the case. 11 U.S.C. § 521(i)(4). That subsection is not applicable in this situation.

² The rules for computing time under Federal Rule of Bankruptcy Procedure 9006 are not applicable in this situation because they do not apply in a statute that specifies a method for computing time. Fed. R. Bankr. P. 9006(a).

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ben Barry". The signature is written in a cursive style and is positioned above a horizontal line.

Ben Barry
United States Bankruptcy Judge
Dated: 01/07/2016

cc: David Nixon
Joyce B. Babin