

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 23-10687-BAH
Chapter 13

Peter Douglas Field,
Debtor

ORDER

The Debtor filed a chapter 13 bankruptcy petition on December 15, 2023 (Doc. No. 1). The petition was accompanied by Schedule E/F, which listed the “NH State Dept., Bureau of Security Reg.” (the “Bureau”) as a creditor holding a \$900,000.00 unliquidated and disputed claim, based on an

[a]dministrative order, currently pending appeal, not yet final; \$850,000 ordered in restitution (duplicate of certain claims already listed herein that are unliquidated and disputed), plus \$50,000 in Bureau’s costs and \$2,500 per violation.

(Doc. No. 1). The Notice of Chapter 13 Bankruptcy Case (Doc. No. 4) (the “Notice”) indicated that the deadline to file a complaint challenging the dischargeability of certain debts under 11 U.S.C. § 523(a)(2) or (4) was March 22, 2024. The Bureau was served with a copy of the Notice on December 20, 2023 (Doc. No. 9).

On March 20, 2024, two days before the dischargeability deadline, the Bureau filed its Motion to Extend Time to File a Complaint to Challenge the Dischargeability of Certain Debts by the New Hampshire Bureau of Securities Regulation (Doc. No. 58) (the “Motion”). The Bureau sought a sixty-day extension, up to and including May 21, 2024, to file a complaint objecting to dischargeability pursuant to 11 U.S.C. § 523(c). The Motion was noticed for a hearing on May 1, 2024 (Doc. No. 59). As cause for the Court to grant the extension, the Bureau contended (1) cause exists because this was the Bureau’s first request for an extension of the

deadline; (2) an extension would cause little to no prejudice to the Debtor since his chapter 13 plan has not yet been confirmed; and (3) a hearing on the merits of the Bureau's underlying administrative enforcement action against the Debtor had not yet been held, and "[a]t the conclusion of th[at] hearing, the Secretary will make factual findings that may result in collateral estoppel on the relevant issues in a subsequent action to challenge the dischargeability of debts under 11 U.S.C. § 523(a)(2) or (4) ... [and] the Secretary's findings may reduce the issues requiring resolution by this Court in a subsequent adversary proceeding."

The Debtor filed an objection to the Motion (Doc. No. 66) (the "Objection") on the grounds that the Bureau has failed to establish cause to grant the requested extension of time. The Debtor argues that the Bureau has failed to establish even one of the five factors that courts examine when assessing cause for extending the dischargeability deadline under Federal Rule of Bankruptcy Procedure ("Rule) 4007(c).

Rule 4007(c) provides:

Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4007(c). It is undisputed that the Bureau filed the Motion before the March 22, 2024, deadline. At issue is whether the Bureau has established "cause" within the meaning of the Rule.

Rule 4007(c) not define "cause." Courts analyze the following non-exclusive five-factor list to determine cause:

1. Whether the creditor had sufficient notice of the deadline and the information to file an objection;

2. The complexity of the case;
3. Whether the creditor exercised diligence;
4. Whether the debtor refused in bad faith to cooperate with the creditor; and
5. The possibility that proceedings pending in another forum will result in collateral estoppel on the relevant issues.

See Melamed v. Swift Fin. LLC (In re Melamed), No. 21-CV-2022 (NSR), 2022 WL 17959472, at *2 (S.D.N.Y. Dec. 27, 2022); In re Holland, Case # 18-10488, 2019 WL 3283050, at *5 (Bankr. D. Vt. July 19, 2019); In re Chatkhan, 455 B.R. 365, 367-68 (Bankr. E.D.N.Y. 2011); In re Boltz-Rubinstein, 454 B.R. 614, 620 (Bankr. E.D. Pa. 2011); see Multinational Life Ins. Co. v. Van Ryn Soler (In re Van Rhyn Soler), Case No. 14-10211 BKT, Adv. No. 15-00181, 2016 WL 922204, at *4 (Bankr. D.P.R. Mar. 10, 2016) (applying these five factors in determining cause to extend deadline to object to discharge under Rule 4004(b)). Even though courts analyze these factors, “[t]he majority view is that there can be no cause justifying an extension of time to object to discharge where the party seeking the extension failed to diligently pursue discovery prior to expiration of the deadline.” In re Grillo, 212 B.R. 744, 747 (Bankr. E.D.N.Y. 1997) (quoted in Chatkhan, 455 B.R. at 368); see also Santana Olmo v. Quinones Rivera (In re Quinones Rivera), 184 B.R. 178, 183 (D.P.R. 1995) (indicating a request for the extension of the Rule 4004(b) deadline could be denied where movant made “no attempts at discovery, until his motion for extension of the deadline for objecting to discharge”); In re Leary, 185 B.R. 405, 406 (Bankr. D. Mass. 1995) (holding cause under Rule 4004(b) absent where the creditor waited until ten days prior to expiration of the deadline to pursue a Rule 2004 examination). The decision to enlarge time under Rule 4007(c) rests within the Court’s discretion. Melamed, 2022 WL 17959472, at *2; Holland, 2019 WL 3283050, at*5.

The Bureau admitted at the hearing on the Motion that it did not need to do any more investigation of the facts before it could file an adversary complaint and, in fact, had one ready to file. It conceded that it brought an enforcement action against the Debtor prepetition concerning his violation of securities laws, and it is those claims that would form the basis for a non-dischargeability complaint. The Bureau acknowledged at the hearing on the Motion that it had conducted a cost-benefit analysis and was opting to wait until the state enforcement action proceeded to a hearing on the merits (which hearing was to occur on April 3, 2024) before deciding whether to file its adversary proceeding. Because, as the Bureau explained, if the Bureau succeeded on the merits, then it would proceed with the filing of a non-dischargeability complaint and then a motion for summary judgment, but if the Bureau was unsuccessful, then it likely would not file a non-dischargeability complaint. Importantly, the Bureau did not claim that it lacked sufficient knowledge of the facts to bring a complaint under § 523(a)(2) or (4) before the March 22, 2024, deadline to do so.

As the Debtor argued at the hearing, the Bureau's admissions are fatal and warrant the denial of the Motion. Clearly, the Bureau did not act with diligence. As the Debtor explained in the Objection, the other factors that the Court should consider in determining whether to grant the Motion also weigh in favor of denial of the Motion. The Bureau had sufficient notice of the deadline as it was listed as a creditor and received notice of the Debtor's bankruptcy case in a timely fashion. It does not appear that the case is overly complex as the Bureau was able to file an administrative action prepetition and obtain a favorable decision—albeit still subject to the Debtor's right to appeal—imposing fines and restitution upon the Debtor on October 5, 2023, over two months before the Debtor commenced this chapter 13 case. There is no indication that the Debtor refused to cooperate with the Bureau in connection with the bringing an adversary

proceeding in this Court as the Debtor has indicated that the Bureau has made no effort to obtain any discovery from the Debtor during this bankruptcy case. And while the Bureau argued that a hearing on the merits in the administrative action “may result” in collateral estoppel, the Bureau has not demonstrated that its administrative petition or the Secretary’s ensuing order addressed any of the elements of claims under § 523(a)(2) or (4) as would be required for collateral estoppel.¹

For these reasons, the Court finds that the Bureau failed to establish cause for extending the deadline to object to the dischargeability its debt pursuant to § 523(a)(2) or (4). Accordingly, the Motion is denied.²

ENTERED at Concord, New Hampshire.

Date: May 3, 2024

/s/ Bruce A. Harwood
Bruce A. Harwood
Chief Bankruptcy Judge

¹ With respect to the Bureau’s argument that the Debtor would suffer little to no prejudice if the Motion were granted since the Debtor’s chapter 13 plan has not yet been confirmed, as the Court articulated at the hearing, the Debtor is entitled to know early on in his bankruptcy case whether he may be facing a large nondischargeable debt.

² As the Court noted at the hearing, this decision does not determine whether the debt the Debtor owes to the Bureau may be excepted from the Debtor’s chapter 13 discharge pursuant to 11 U.S.C. § 1328(a)(4) as a debt “for restitution, or damages awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual.”