

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

JOSEPH A. REFINO : BK No. 99-13444
Debtor : Chapter 7
:
CARL and SUSAN SILVESTRI :
Plaintiffs :

vs. : A.P. No. 03-1052

JOSEPH A. REFINO :
Defendant :
- - - - - x

**ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED
FOR FAILURE TO COMPLY WITH PRIOR ORDERS**

The Plaintiffs, Carl and Susan Silvestri became involved in this bankruptcy proceeding in February 2003 when the Debtor sought to add them as creditors. The Silvestris did not oppose the motion and by Order dated March 11, 2003, they were added as creditors. In that Order, the Silvestris were allowed until May 12, 2003, to file "complaints objecting to discharge pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), (a)(6), or (a)(15)."

On May 12, 2003, the Silvestris, acting *pro se*, filed a document entitled "Motion to Object." The document referenced no section of the Bankruptcy Code and had none of the earmarks of a complaint to determine dischargeability. A Defective Pleading Notice was issued to the Silvestris advising them that the Court would treat the filing as a Complaint, provided they

paid the \$150 filing fee and filed an AP Coversheet.¹ The Silvestris complied, and the "Motion to Object" was accepted as the complaint in A.P. No. 03-1052.

On October 17, 2003, the Debtor answered the Complaint. On December 1, 2003, the Court issued an Order to Show Cause why the case should not be dismissed for failure to file a discovery plan pursuant to R.I. LBR 7026-1. The Order to Show Cause required a written response by December 11, 2003, and the Silvestris, still *pro se*, responded stating that Debtor's counsel was being uncooperative and would not meet to discuss the terms of a plan. Because the required discovery plan was still missing, the Court held an initial pre-trial conference on January 6, 2004. At the conference, Debtor's counsel, Robert Cosentino, Esq., indicated that he would file a Motion to Dismiss the Complaint. On January 9, 2004, the Debtor moved for dismissal on the ground that the complaint failed to state any grounds for relief and was merely an impermissible attempt to

¹ By treating this as a complaint, the Court was preserving the Silvestris' right to object to the Debtor's discharge by having a timely complaint on file.

reargue the motion to add the Silvestris as creditors which was decided adversely to them long ago.

The Silvestris objected to the dismissal motion and a hearing was held on February 13, 2004, wherein the Court dismissed their defective "complaint," but allowed the Silvestris to file an amended complaint within 30 days. Because of their demonstrated inability to adequately represent themselves, the Court strongly urged the Silvestris to obtain counsel to assist them in filing a proper complaint. On March 15, 2004, the Silvestris filed an amended complaint entitled "Plaintiff's, Carl and Susan Silvestri, in Support of Motion to Object to Defendant's, Joseph A. Refino Motion to Reopen and to Amend." Attached to the "amended complaint" is a "Memorandum of Law."

Because the "Amended Complaint" suffered from the same infirmities as the original complaint, the Court issued a Notice of Defective Pleading to the Sylvestris advising them to again file an appropriate complaint on or before August 4, 2004, or the relief requested would be automatically denied. The Sylvestris never responded to the Notice of Defective pleading

and the time expired long ago to get this case properly before the Court.

"[T]here is a long line of authority rejecting the notion that pro se litigants in either civil or regulatory cases are entitled to extra procedural swaddling." See *Eagle Eye Fishing Corp. v. United States Dep't. of Commerce*, 20 F.3d 503, 506 (1st Cir. 1994). While the Silvestris grossly overestimate their legal skills, their pleadings as filed have not met even the minimal notice requirements of Fed R. Civ. P. 8 incorporated into bankruptcy by Fed. R. Bankr. P. 7008.

Notwithstanding their consistently inadequate submissions, the Sylvestris are allowed a final opportunity to file a second amended complaint which complies with the requirements of Fed. R. Civ. P. 8 and 11 U.S.C. § 523(a) or § 727(a), on or before February 4, 2005. Failure to comply this time will result in the automatic dismissal of A.P. No. 03-1052, with prejudice.

ORDER:

ENTER:

CAL
Deputy Clerk



Arthur N. Votolato
U.S. Bankruptcy Judge
Date: 1/19/2005

Entered on docket: 1/19/2005