

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In Re:

EVAN P. LOWNEY,

Debtor

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Civil Action 18-cv-10943
Bankruptcy Case No. 17-bk-11609

MEMORANDUM AND ORDER

January 28, 2019

TALWANI, D.J.

Before the court is Debtor Evan P. Lowney's Motion to Withdraw Reference Re: United States Bankruptcy Court for the District of Massachusetts Petition Number 1:17-bk-11609 (MSH) ("Mot. to Withdraw the Reference") [#1] and Debtor's Motion to Stay Proceeding Pending Resolution of Debtor's Motion to Withdraw the Reference ("Motion to Stay") [#5]. For the following reasons, Debtor's motions are DENIED as moot.

Debtor filed a "Voluntary Petition for Individuals Filing Bankruptcy" pursuant to chapter 7 of title 11 of the United States Code in bankruptcy court. See In re Lowney, No. 17-bk-11609, Docket No. 1 (Bankr. D. Mass., filed April 30, 2017). On April 12, 2018, Debtor filed in those proceedings a Motion to Withdraw the Reference and Memorandum of Reasons in Support of Debtor's Motion to Withdraw the Reference with a copy of an earlier-filed Motion for Order to Show Cause Re: MLBR Appendix 8 Rule 7(b) and 18 U.S.C. §§1341-1342 ("Motion for Order to Show Cause") attached thereto. Id. at Docket Nos. 195, 196; see also id. Docket No. 188. Debtor also filed a Motion to Waive Filing Fee and Proceed In Forma Pauperis. Id. at Docket No. 197.

On May 9, 2018, the bankruptcy court allowed the motion to waive fees, id. at Docket No. 198, and transmitted Debtor's Motion to Withdraw the Reference and Memorandum in Support of Motion to Withdraw the Reference to this court, id. at Docket No. 199. Debtor promptly filed in the bankruptcy court a Renewed Motion to Stay Proceedings Pending Resolution of Debtor's Motion to Withdraw the Reference ("Renewed Motion to Stay"). Id. Docket No. 201.

The Motion to Withdraw the Reference was docketed in this court on the same day. Debtor's Mot. to Withdraw the Reference [#1].

Two days later, on May 11, 2018, the bankruptcy court denied Debtor's Motion for Order to Show Cause (Docket No. 188) and Renewed Motion to Stay (Docket No. 201), and granted Debtor's requested chapter 7 discharge ("Order of Discharge"). No. 17-bk-11609 at Docket Nos. 202, 204, 205. These three bankruptcy orders were sent to Debtor by first class mail on May 13, 2018. Id. at Docket Nos. 207, 208, 210.¹ Debtor did not file a notice of appeal and the time in which to do so has expired. See L.R. 203, D. Mass.; Fed. R. Bankr. P. 8002.

On May 18, 2018, Debtor filed the pending Motion to Stay [#5] in this court. On January 7, 2019, this court ordered Debtor to show cause why, in light of the bankruptcy court's order granting Debtor a chapter 7 discharge, there remains any matter for which the reference may be withdrawn. Elec. Order [#7]. Debtor responded on January 22, 2019, stating that his request that the reference be withdrawn from the bankruptcy court is properly before this court because there remains a pending unresolved motion on the bankruptcy court's docket "whose resolution may inform the propriety of making further filings in the bankruptcy court proceeding, which, to the

¹ The bankruptcy court's certificates of notice reflect that the orders were mailed to Debtor's address on file at the bankruptcy court. This is the same address on file with this court.

best of Debtor's knowledge and irrespective of the issuance of any discharge, remains open."²

Debtor's Resp. to Order to Show 1 [#9]. Debtor also stated that he anticipated making additional filings in the bankruptcy court matter. Id.

Contrary to Debtor's response, the bankruptcy court has ruled on the Motion for Order to Show Cause and the bankruptcy proceedings have terminated. Accordingly, Debtor's Motion to Withdraw the Reference [#1] and Motion to Stay [#5] are denied as moot.

The clerk shall close the case.

IT IS SO ORDERED.

Dated: January 28, 2019

/s/ Indira Talwani
United States District Judge

² Debtor states in a footnote that he has "no current mechanism to verify this himself beyond travel to the courthouse or expending funds to order a more recent copy of the docket from the clerk," but that, "as of discharge issuing, no ruling had issued on [the Motion for Order to Show Cause, Docket No. 188], [and] that he has received no notice of a ruling since that time." Id. at 1 n.1.