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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:
Jean Bristol,
Debtor.

Chapter 13
Case # 19-10049

ORDER SUSTAINING INTERNAL REVENUE SERVICE’S OBJECTION TO DEBTOR’S SECOND MOTION TO MODIFY CHAPTER 13 PLAN AND DENYING DEBTOR’S SECOND MOTION TO MODIFY CHAPTER 13 PLAN WITHOUT PREJUDICE

On February 21, 2022, Jean Bristol (the “Debtor”) filed a Motion to Modify her confirmed Chapter 13 Plan on the basis that she had received a mortgage modification from her mortgage lender and hence, the Plan term and amounts could be reduced (doc. #49) (the “Motion to Modify”).¹ The Internal Revenue Service (the “IRS”) filed an objection to the Motion to Modify on the basis that the Debtor was in default of her Confirmation Order which directs the Debtor to remain compliant with all post-petition tax obligations (docs. # 34; 43). According to the IRS, as of February 23, 2022, the Debtor had failed to file post-petition individual tax returns for the periods ending December 31, 2019, and December 31, 2021 (doc. #58). The IRS did not object to the Debtor’s proposals to reduce the term of the Plan or the total amount paid into the Plan. (Id.)

The Court held a series of hearings on the Motion to Modify and corresponding objection: March 29, 2022; April 26, 2022; May 18, 2022; July 26, 2022; August 30, 2022; and September 20, 2022. The hearing was continued from time to time at the request of the parties to (1) allow the Debtor ample opportunity to prepare and file the missing tax returns; and (2) pay the taxes owed of approximately \$250-300 assessed after the missing tax returns were processed. The Debtor was directed to file a certificate of service with the Court once the taxes were paid.² Given the amount owed, Debtor’s counsel remained confident that payment was forthcoming.

¹ Prior to the filing of the Motion to Modify, the Chapter 13 Trustee filed a Notice of Delinquency stating that the Debtor had fallen behind in Plan payments (doc. # 46).

² The Debtor filed a Certificate of Service on May 19, 2022, when the tax returns were filed (doc. # 73).

At the hearing held on September 20, 2022, Nancy Geise, Esq., appeared on behalf of the Debtor, Jocelyn Koch, Esq. appeared on behalf of the IRS, and Jan Sensenich appeared in his capacity as Chapter 13 Trustee. As of September 20, 2022, the Debtor had not paid her post-petition tax liabilities and the Chapter 13 Trustee stated on the record that the Debtor was behind on her Plan payments.

Based upon the foregoing, the Court FINDS that the Debtor is not in compliance with the terms of her confirmed Plan. The Confirmation Order specifically provides under the heading “Duties of the Debtor and Trustee During the Plan Term”: “The debtor shall timely file all required federal and state tax returns, [and] pay all taxes when due” (doc. #34, p. 5). It is undisputed that the Debtor failed to timely file all required federal tax returns and that a post-petition tax liability remains due.

While it is well established in this District that a debtor may cure Plan defaults through a modification of a confirmed Plan provided the post-confirmation modification complies with the Bankruptcy Code, the Court FINDS the proposed modification before the Court does not address the extent of the post-confirmation defaults under the terms of the Debtor’s confirmed Plan.

Accordingly, the Court SUSTAINS the Internal Revenue Service’s objection to the Motion to Modify and DENIES the Motion to Modify, without prejudice.

SO ORDERED.

September 21, 2022
Burlington, Vermont



Heather Z. Cooper
United States Bankruptcy Judge