

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:  David Mark Marshall,  Debtor	Chapter 7 Case No. 16-10205
William K. Harrington,  Plaintiff  v.  David Mark Marshall,  Defendant	Adv. Proc. No. 16-1027

**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT**

The Court conducted a hearing on the United States Trustee's Motion for Entry of Default Judgment [Dkt. No. 6] on May 11, 2017. The United States Trustee appeared through counsel, and the trustee in Mr. Marshall's chapter 7 case also appeared. Mr. Marshall, the defendant in this adversary proceeding, did not appear, either on his own behalf or through counsel. Mr. Marshall also did not appear at a prior hearing on the motion on April 11, 2017.

The United States Trustee is entitled to a default judgment in this adversary proceeding based on (i) the well-pleaded factual allegations in the complaint in this proceeding, which have been admitted by operation of Fed. R. Civ. P. 8(b)(6); (ii) the Court's judicial notice of the docket and the items entered on the docket in Mr. Marshall's chapter 7 case (Case No. 16-10205) and (iii) the uncontested offers of proof made by the chapter 7 trustee at hearings on April 11, 2017 and May 11, 2017. Denial of a discharge under 11 U.S.C. § 727(a)(4)(A) and 11 U.S.C. § 727(a)(4)(D) is justified by the cumulative sum of Mr. Marshall's repeated failures to appear for

examination at the section 341 meeting, the numerous errors and omissions on the schedules, statements, and other documents required by Fed. R. Bankr. P. 1007(b), and his failure to comply with his duties as a chapter 7 debtor including, without limitation, the failure to provide pay advices to the trustee as required by 11 U.S.C. § 521(a)(1)(B)(iv). Mr. Marshall has appeared *pro se* in this adversary proceeding and in the associated chapter 7 case, although he has been encouraged to obtain counsel several times. Mr. Marshall has been given multiple opportunities to comply with his obligations as a chapter 7 debtor. At each turn, he has failed to comply or has complied only after substantial delay.<sup>1</sup> In short, Mr. Marshall has repeatedly flouted his obligations as a debtor in a case under Title 11. The United States Trustee has not presented evidence regarding the value of assets that should have been, but were not, disclosed on the schedules. But that failure is understandable and, perhaps more to the point, the sheer quantity of Mr. Marshall's omissions and the persistent nature of his failure to cooperate are enough. *See Smith v. Grondin*, 232 B.R. 274 (B.A.P. 1st Cir. 1999); *cf. Pereira v. Young*, 346 B.R. 597 (Bankr. E.D.N.Y. 2006). Under all of the facts and circumstances, the United States Trustee has demonstrated that Mr. Marshall has acted, or failed to act, with the requisite knowing and fraudulent intent. He is not entitled to a discharge under section 727.

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<sup>1</sup> For example, in late April 2016, the chapter 7 trustee asked for Mr. Marshall's income tax returns for 2015. Almost one year later, on or about April 10, 2017, Mr. Marshall provided a transcript of his 2015 federal income tax return to the trustee.

The Clerk is directed to enter a separate judgment under Fed. R. Civ. P. 58(b)(2) in favor of the United States Trustee on both counts of his complaint. No costs are awarded.



Dated: May 11, 2017

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Michael A. Fagone  
United States Bankruptcy Judge  
District of Maine