

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
TIMOTHY R. HUFFMAN	§	Case No. 07-40046
ANGELA M. HUFFMAN,	§	(Chapter 13)
	§	
Debtors.	§	

ORDER DENYING MOTION TO VACATE

Timothy R. Huffman and Angela M. Huffman (collectively, the “Debtors”) initiated a bankruptcy case on January 9, 2007 (the “Petition Date”) by filing a petition for relief under Chapter 13 of the Bankruptcy Code. The Debtors subsequently failed to file all documents required by 11 U.S.C. §§ 521(a)(1) on or before the 45th day after the Petition Date. Thus, pursuant to 11 U.S.C. § 521(i)(1), the Debtor’s bankruptcy case was automatically dismissed on February 24, 2007. The Court entered an order evidencing the automatic dismissal on February 27, 2007.

This matter is before the Court on the Motion to Vacate Automatic Dismissal of Chapter 13 Case of Individual Debtor Pursuant to 11 U.S.C. §521(i)(1) (the “Motion to Vacate”) filed by the Debtors on March 6, 2007. In the Motion to Vacate, counsel for the Debtors states, among other things, that a new legal assistant inadvertently failed to file all of the required documents. The Debtors ask this Court to circumvent 11 U.S.C. §521 by vacating the automatic dismissal of their case based on equity.

Although the Debtors do not cite to any particular Federal Rule of Civil Procedure, the Motion to Vacate was filed more than 10 days after the automatic dismissal of their case and falls within Rule 60(b). However, it is not possible for this Court to “vacate” provisions of the Bankruptcy Code based on the Federal Rules of Civil

Procedure. “Quite simply, an automatic statutory dismissal is not the kind of action contemplated by Rule 60(b) and therefore cannot form the basis for any relief under Rule 60(b). Even if it were, however, Rule 60(b) could not be used to bypass the strict statutory scheme established by § 521(a)(1) and (i).” *In re Wilkinson*, 346 B.R. 539, 546 (Bankr.D.Utah 2006). *See also In re Ott*, 343 B.R. 264, 265 (Bankr. D. Colo. 2006) (“After the expiration of the specified period set forth in 11 U.S.C. § 521(i)(1), there are no exceptions, no excuses, only dismissal and the consequences that flow therefrom.”); *In re Williams*, 339 B.R. 794, 795 (court did not have power to grant debtor's untimely request for extension of time to comply with §521(a)(1)); *In re Lovato*, 343 B.R. 268, 270 (Bankr. D. N.M. 2006) (“After the expiration of the time limits set forth in 11 U.S.C. § 521(i)(1), the Court is left with no discretion to allow the Debtor additional time within which to comply with the requirement for submission of payment advices.”). Accordingly, it is

ORDERED that the Motion to Vacate shall be, and it is hereby, **DENIED**.

Signed on 3/13/2007

Brenda T. Rhoades SD
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE