

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE:

RICARDO A. AGUILAR

CASE NO. 19-10150

DEBTOR

CHAPTER 13

REASONS FOR DECISION

The chapter 13 trustee has moved to dismiss the debtors' case for failure to make plan payments¹ totaling \$3,360 when the motion was filed. The motion was originally noticed for hearing on March 18, 2020. Oral argument on the motion is not necessary.

Debtor's counsel responded that the debtor had worked as a civilian contractor in Iraq until early January 2020 and was waiting to return there.² However, counsel was unable to reach the debtor to determine the status of his employment on the date she filed her opposition to the motion.

After the courthouse closed due to the COVID-19 pandemic, the court on its own motion twice continued the hearing on the motion to dismiss: first to April 15, 2020 and then to May 6, 2020.³ The debtor thus has had more than two months to cure the payment default. The trustee has not withdrawn the motion and nothing in the record suggests that the debtor has cured the default. In the two months since the trustee moved to dismiss his case, the debtor has not amended his response to the motion, filed a modified plan or sought suspension of plan payments.

¹ Trustee's Motion to Dismiss, P-43.

² P-46.

³ P-48 and 50.

Bankruptcy Code section 1326(a)(1) provides that a chapter 13 "debtor shall commence making plan payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier." Failure to make plan payments is "cause" for dismissal under section 1307(c)(6) as a "material default by the debtor with respect to a term of the confirmed plan."⁴

Accordingly, by separate order, the court will grant the trustee's motion to dismiss the case.

Baton Rouge, Louisiana, May 5, 2020.

s/ Douglas D. Dodd
DOUGLAS D. DODD
UNITED STATES BANKRUPTCY JUDGE

⁴ See *In re Mallory*, 444 B.R. 553 (S.D. Texas 2011) (debtor's failure to make plan payments for three and one-half months was a material default supporting dismissal).