

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

DONALD RUHAAK,

DEBTOR

CASE NO. BK88-514

CH. 13

MEMORANDUM

A hearing on the motions to dismiss filed by Alan Viox, Filing No. 21, Century Lumber Center and D & D Electric, Filing No. 25, and First Nebraska Bank, Filing No. 19, was held July 5, 1988. John Guthery of Perry, Guthery, Haase & Gessford, P.C., Lincoln, Nebraska, appeared for Donald Joe Ruhaak, d/b/a Ruhaak Construction (debtor); William Zastera, Nebraska City, Nebraska, appeared for Century Lumber Center and D & D Electric Company; Timothy Nelsen of Nelsen and Kelch, Nebraska City, Nebraska, appeared for Alan Viox, d/b/a Viox Construction and James Cavanagh of Erickson & Sederstrom, P.C., Omaha, Nebraska, appeared for First Nebraska Bank (Bank). This memorandum constitutes the Court's findings of fact and conclusions of law pursuant to Bankr. R. 7052.

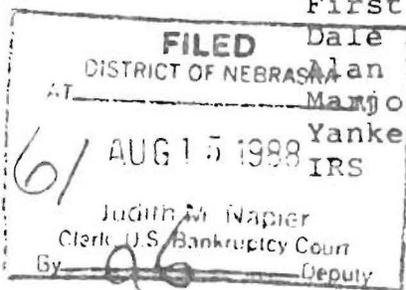
All three motions for dismissal claim that debtor is not eligible for Chapter 13 relief because his unsecured debts are in excess of \$100,000, and that debtor does not have regular income.

At the hearing the Court received affidavits from debtor, John Guthery, James Cavanagh, Mark Eilers (Manager of Century Lumber Center), William Zastera, Timothy Nelsen and Alan Viox.

Section 109(e) of 11 U.S.C. specifies the eligibility requirements for Chapter 13. It provides, in part, that "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$100,000 ... may be a debtor under chapter 13 of this title." 11 U.S.C. § 109(e) (1987).

The schedules attached to debtor's petition lists the following debts as unsecured, liquidated and noncontingent:

<u>Name of Creditor</u>	<u>Amount of Claim</u>
Bohl Plumbing & Heating	\$ 418.09
Century Lumber Center	\$27,500.00
Concrete Industries	\$ 6,247.83
D & D Electric	\$ 3,091.78
First Federal Lincoln (Visa)	\$ 1,125.14
Dale Seybert	\$ 650.00
Alan Viox	\$ 2,200.00
Margorie Wurtele	\$17,390.74
Yankee Hill Manufacturing	\$ 838.52
IRS	\$ 800.00
TOTAL	\$60,262.10



In addition to the claims listed above, debtor lists an unsecured debt of \$9,200.00 to Valley National Bank, Hamburg, Iowa, which debtor identifies as unliquidated. None of the affidavits challenges this classification; therefore, the Court will not include this claim in calculating debtor's eligibility.

The major claim in contention is that belonging to First Nebraska Bank. Debtor's schedule lists a debt of \$34,000.00 and classifies it as disputed, contingent and unliquidated, which classification First Nebraska Bank challenges.

The Court does not find it necessary to make that determination because even if the entire \$34,000.00 were a liquidated and noncontingent debt, its addition to the \$60,262.10 total above is less than the \$100,000.00 ceiling provided in Section 109(e). The Court does find, however, that \$20,986.16 of the \$34,000.00 is set out in a promissory note between debtor and First Nebraska Bank. Without examining the status of the amount in excess of \$20,986.16 claimed by First Nebraska Bank, the Court finds that the \$20,986.16 is liquidated and noncontingent.

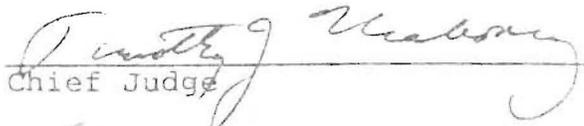
A "person with regular income" is defined in Section 101 as an "individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title." 11 U.S.C. § 101(29) (1987). It is well settled that regular income can be derived from sources other than wages. In re Estus, 695 F.2d 311, 314 n.3 (8th Cir. 1982). Debtor's plan lists an average monthly income of \$2,400.00 with average monthly expenses of \$2,287.00. Thus, debtor has available excess income to enable him to make payments under his plan. See In re Cavia (24 Bankr. 573, 575) (Bankr. 9th Cir. 1982).

Although debtor is self employed, debtor's plan indicates that he has sufficient regular income to maintain repayment of his debts. Motions to dismiss are overruled. Debtor is eligible for Chapter 13 relief.

Separate journal entry will be entered.

DATED: August 15, 1988.

BY THE COURT:


Chief Judge