

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
DISTRICT OF NEBRASKA  
AT \_\_\_\_\_ M  
DEC 14 1984  
By William L. Olson, Clerk  
Deputy

IN RE: )  
 )  
GARY AREHART, )  
 )  
 )  
Debtor. )

BK 84-755  
CV 84-0-528  
ORDER

This matter is before the Court on appeal from the disallowance of the Internal Revenue Service claim for taxes by the United States Bankruptcy Court for the District of Nebraska. The Bankruptcy Court sustained the debtor in possession's objection to the tax claim for \$51,060.67 when counsel for the United States failed to appear at a status hearing. The Court finds that the decision of the Bankruptcy Court must be reversed.

A review of the briefs and the record on appeal, including the transcript of the status hearing, reveals that the Bankruptcy Court sustained the objection to the claim without ascertaining why the government counsel failed to appear or giving the government an opportunity to show its failure to appear was excusable. Neither did the Bankruptcy Judge delve into the factual validity of the objection to the claim, he merely sustained it. There is no indication whether sustaining the objection was a sanction for failure of the government's counsel to appear or based on a factual determination of the merits of the issue. At the status hearing counsel for the debtor was directed to give notice of the Bankruptcy Court's decision to sustain the objection to the United States Attorney.

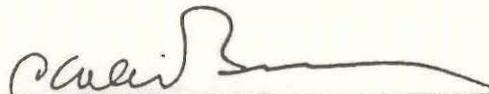
The Court finds that sustaining the objection was improper. In this case, the decision to sustain the objection could be regarded as a dismissal of the claim of the Internal Revenue Service without a consideration of the merits of the claim. "The norm of judicial practice should be to dispose of cases on their merits, and dismissals on procedural grounds are justified only in exceptional circumstances." Farmers Plant Food, Inc. v. Fisher, No. 84-5005, slip op. at 2 (8th Cir. Oct. 18, 1984). The case at bar is not an exceptional circumstance warranting such drastic result. The transcript and briefs indicate there may have been a deficiency in the notice to the government of the status hearing and it appears that the objection to the claim was perhaps based on a mistake of fact. There are no allegations that the government had been repeatedly disregarding orders or that it intentionally missed the status hearing. See also Campbell v. Eastland, 307 F.2d 478, 491 (5th Cir. 1962), cert. denied, 371 U.S. 975 (1963) (default judgment against the United States is against public policy); Fed. R. Civ. P. 55(e) (before judgment of default to be entered against the United States a claim for relief must be established by satisfactory evidence to the Court). Compare Alameda v. Secretary of Health Ed. and Welfare, 622 F.2d 1044, 1048 (1st Cir. 1980) (after repeated disregard of the judge's orders, judgment of default was properly entered against the government under Fed. R. Civ. P. 55(a) for failure to defend).

The Court finds that sustaining the objection to the claim of the Internal Revenue Service was under the circumstances of this case an abuse of discretion.

IT IS THEREFORE ORDERED that the judgment is reversed and remanded to the Bankruptcy Court for such action as it deems proper and which is consistent with this opinion.

DATED this 14<sup>th</sup> day of December, 1984.

BY THE COURT:



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C. ARLEN BEAM  
UNITED STATES DISTRICT JUDGE