UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

KENNETH KELLEY,

DEBTOR

AMERICAN FAMILY INSURANCE,

A80-393

CASE NO. BK80-1347

Plaintiff

vs.

KENNETH KELLEY,

Defendant

MEMORANDUM AND ORDER

In this adversary proceeding plaintiff alleges defendant breached a fiduciary obligation which results in a nondischargeable debt.

Prior to bankruptcy, defendant was an agent for plaintiff. Defendant wrote policies for plaintiff. The evidence discloses at most that defendant failed to collect premiums from policyholders and remit appropriate premiums to the plaintiff. Accordingly, there is no breach of the contractual agreement between the parties which require defendant to hold in trust premiums collected from policyholders.

Plaintiff argues that the contractual provisions between the parties also required defendant to collect premiums and that this, in itself, is a fiduciary obligation which was breached. However, I conclude that this contractual provision is at most only a contractual provision and represents no fiduciary obligation on defendant. Every creditor, when confronted with a bankruptcy discharge, experiences a breach of contract, expressed or implied. Without more, the indebtedness is not rendered nondischargeable. Accordingly, it is

ORDERED that the plaintiff's complaint is dismissed with prejudice and the indebtedness to plaintiff from the defendant is discharged in this bankruptcy proceeding.

DATED: March 20, 1981.

BY THE COURT: Bankruptcy Judge

Copies mailed to each of the following:

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