

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

DALE AND RHONDA HANSEN,

DEBTORS

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CASE NO. BK88-936

Chapter 7

MEMORANDUM

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Convert to Chapter 13, Filing #7, Objection to Conversion, Filing #17, and Amended Objection, Filing #18, heard September 20, 1988.

APPEARANCES

Michael Bacon, Attorney for Bank, P.O. Box 208, Gothenburg, NE 69138

Claude Berreckman, Attorney for Debtor, P.O. Box 214, Cozad, NE 69130

Facts and Law

Debtors filed a Chapter 7 petition and Bank obtained an order granting relief from stay. Debtors move to convert to Chapter 13. Bank objects, claiming that debtors are not eligible for Chapter 13 relief because they operate their business as a partnership, do not have regular income, and such conversion is in bad faith, intended only to hinder or delay creditors.

Section 706(a) of the Bankruptcy Code provides an absolute right of conversion from Chapter 7 to Chapter 13 if the debtors are eligible for Chapter 13 relief. The possibility that a "new" automatic stay arises upon conversion or the possibility that debtors desire to convert with the intent of hindering or delaying creditors are not valid reasons for prohibiting such conversion. If the debtors are eligible for Chapter 13 relief, they may convert and the creditor's remedy is to object to the confirmation of the plan, and move again for relief if the creditor determines such a motion is appropriate pre-confirmation in Chapter 13.

The initial petition and schedules filed in the Chapter 7 case recite that debtors are filing as individuals and that they operate a business under a trade name. They are husband and wife. There is no indication that the business is operated as a partnership and no partnership has filed for relief.

The schedule of ~~current income~~ shows a monthly family gross income of \$1,168.

FILED  
DISTRICT OF NEBRASKA  
AT \_\_\_\_\_ M  
SEP 27 1988  
Judith M. Wapler  
Clerk U.S. Bankruptcy Court  
By \_\_\_\_\_ Deputy

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The debtors have filed Chapter 7 as individuals and are eligible to be Chapter 13 debtors as individuals. They have regular monthly income which may be sufficient to pay to creditors through a plan. Feasibility of the plan is an issue for confirmation, not for eligibility.

Separate journal entry to be entered.

DATED: September 26, 1988.

BY THE COURT:

  
Chief Judge