

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
ROBERT PETERSON,) CASE NO. BK79-1614
)
DEBTOR)
) A80-208
DUTTON-LAINSON COMPANY,)
)
Plaintiff)
)
vs.)
)
ROBERT PETERSON,)
)
Defendant)

MEMORANDUM AND ORDER

In this adversary proceeding, plaintiff alleged two grounds for denial of the discharge of the defendant. The first ground is that the defendant failed to keep books and records from which his business activities can be ascertained. The second ground is failure to explain loss of assets.

Prior to bankruptcy, defendant operated a lumberyard as a sole proprietor and a construction company which was separately incorporated. A fire occurred on March 4, 1979, which destroyed the lumberyard and other assets of the construction company. Thereafter, defendant attempted to continue in business with the construction company and utilized the lumberyard operation to purchase supplies for the construction business. In addition, defendant's lumberyard operation continued to purchase supplies for third parties. After the fire, defendant kept invoices of billings for equipment and supplies purchased by him but maintained no checking account. His reason for dealing with his customers on a cash basis was that creditors had judgments against him upon which execution could issue. Defendant failed to maintain any ledger book showing sales.

Notwithstanding this failure, I am persuaded that under the circumstances, the defendant's failure to maintain the foregoing records is satisfactorily explained in the evidence before me and that the failure to keep records is reasonable under the circumstances if not in accordance with proper accounting procedures.

Contrary to plaintiff's assertions, defendant has not failed to explain loss of assets. In fact, the losses attributed to the business are not as large as suggested by defendant's bankruptcy schedules since those schedules include corporate debts for which defendant may have no personal liability. All in all, having seen the defendant testify and having heard the evidence, I am unpersuaded that the defendant has failed in his testimony to the Court or to the creditors to explain loss of assets. In

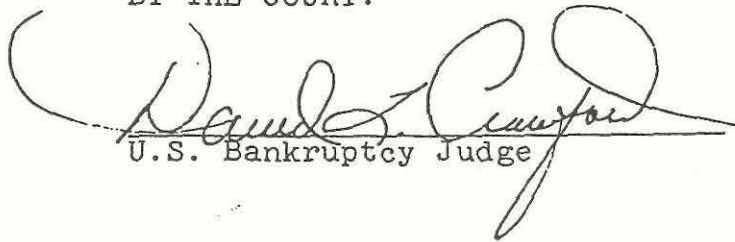
accordance with the foregoing, it is

ORDERED that plaintiff's complaint is dismissed with prejudice; and it is further

ORDERED that the Clerk of the Bankruptcy Court schedule a discharge hearing.

DATED: March 20, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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