

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 I.B.S. OF NEBRASKA)
 d/b/a INDUSTRIALIZED BUILDING) CASE NO. BK79-1419
 SYSTEMS OF NEBRASKA, INC.,)
)
 DEBTOR)

MEMORANDUM AND ORDER

On November 23, 1979, the First National Bank of Minden, Nebraska, filed an involuntary petition against I.B.S. of Nebraska. The involuntary petition did not specify whether relief was sought under Chapter 11 or Chapter 7.

On January 18, 1980, First National Bank of Elwood filed a motion requesting the appointment of an interim trustee if the involuntary proceeding sought relief under Chapter 7 or, in the alternative, the appointment of a trustee under 11 U.S.C. §1104 if the involuntary proceeding sought relief under Chapter 11. Before the hearing on the motion for the appointment of an interim trustee or trustee was held, the debtor and the petitioning creditor stipulated that the creditor's petition was seeking relief under Chapter 7. That stipulation was filed February 1, 1980. On February 8, 1980, I.B.S. of Nebraska filed its voluntary petition under Chapter 11 in the involuntary proceeding. The hearing on the motion for the appointment of an interim trustee or trustee came on for hearing on February 11, 1980.

When an involuntary proceeding is commenced seeking relief under Chapter 7, the Court is authorized to appoint an interim trustee if it finds it is "necessary to preserve the property of the estate or to prevent loss to the estate". 11 U.S.C. §303(g). However, when a voluntary Chapter 11 proceeding is commenced, under 11 U.S.C. §1104(a) the Court may only appoint a trustee upon a showing of cause, including fraud, dishonesty, incompetence, or gross mismanagement or if such appointment is in the interests of creditors or other parties.

My conclusion is that once the voluntary Chapter 11 proceeding was commenced by the debtor, the question of the appointment of a trustee is governed by 11 U.S.C. §1104(a) and not by 11 U.S.C. §303(g). Accordingly, the movant's burden is significantly greater.

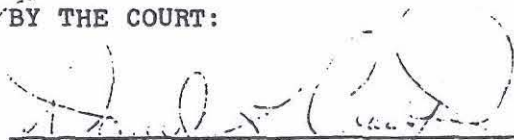
The evidence before me fails to disclose any fraud, dishonesty, incompetence or gross mismanagement. Similarly, there does not seem to any other showing of cause sufficient to require the appointment of a trustee. The only pertinent evidence before me would seem to indicate that the business premises of the debtor is not being occupied or adequately supervised. Also, there

appears to be a lack of insurance on the premises. There is no assurance that the appointment of a trustee will provide any greater supervision of the business premises nor is there any assurance that the appointment of a trustee will mean that there are sufficient liquid funds from which to purchase insurance. Accordingly, having found a lack of evidence to support the significantly higher burden of \$1104, it is

ORDERED that the motion for the appointment of a trustee be, and the same hereby is, denied.

DATED: March 27, 1980.

BY THE COURT:



U.S. Bankruptcy Judge

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