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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
GEORGE EDWARD MEYER,
Debtor.

Case No. 96-55328
Chapter 13
**AMENDED ORDER DISMISSING
CHAPTER 13 CASE¹**

I. INTRODUCTION

Robert Schiro, a judgment creditor of debtor George Meyer, has objected to the Chapter 13 plan of the debtor on the basis that the petition and plan have been filed in bad faith. For the reasons hereafter stated, the objection will be sustained and the case dismissed.

II. LEGAL STANDARD

A Chapter 13 petition filed in bad faith may be dismissed "for cause" pursuant to 11 U.S.C. § 1307(c). Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994). A Chapter 13 plan can only be confirmed if it has been "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). To determine if a petition has been filed in bad faith, courts are

¹ The court's order of August 4, 1997 is amended solely to correct inaccurate year references.

1 guided by the standards used to evaluate whether a plan has been
2 proposed in good faith. Id.

3 The existence of good faith or bad faith is determined by a
4 "totality of the circumstances test." Downey Savings & Loan
5 Assoc. v. Metz (In re Metz), 820 F.2d 1495, 1498 (9th Cir.
6 1987); Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1391 (9th Cir.
7 1982); In re Eisen, 14 F.3d at 470. The court should ask
8 whether the debtor "misrepresented facts in his [petition or]
9 Plan, unfairly manipulated the Bankruptcy Code, or otherwise
10 [filed] his Chapter 13 [petition or] Plan in an inequitable
11 manner." In re Goeb 675 F.2d at 1390.

12 **III. DISCUSSION**

13 In this case, Schiro's claim is based on a judgment he
14 obtained against Meyer in October 1993, in the amount of
15 \$92,347.58. Schiro has taken various steps to collect on the
16 judgment, but it appears that all have been to no avail.

17 Mayer filed his Chapter 13 petition on July 18, 1996. A
18 Chapter 13 plan was filed at the same time. On August 22, 1996,
19 Schiro filed his objection to the debtor's plan. Schiro's
20 allegations of bad faith can be divided into two groups. The
21 first deals with Meyer's conduct during Schiro's battle to
22 collect on his judgment prior to the filing of bankruptcy. The
23 second group deals with alleged defects in Meyer's bankruptcy
24 petition, statement of financial affairs and the plan. While
25 the court does not find all of Schiro's arguments persuasive,
26 there are three areas of the debtor's conduct that lead the
27 court to conclude Meyer has acted in bad faith.

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1 stock in Meyer Stereo, Inc. to Armamini as security for the debt
2 he owed Armamini, although Meyer retained "equitable title and
3 voting rights" in the stock. The stock is similarly not
4 disclosed in the debtor's schedules. In Schedule B, at Question
5 12, Meyer was asked a direct question about his stock holdings.
6 He answered "None." It is also interesting to note that the
7 pledge agreement states that Armamini is owed \$600,000, as
8 opposed to \$400,000, and the debtor's financial condition since
9 1994 makes it unlikely that the debt has been reduced since the
10 pledge.

11 This failure to disclose another major creditor and conceal
12 an asset creates two severe problems. How much is Armamini
13 owed? Have even more creditors been omitted? Given the
14 magnitude of the debtor's omissions, it is quite possible that
15 Meyer does not even qualify for Chapter 13 under § 109(e) of the
16 Bankruptcy Code. By hiding his interest in the corporation, he
17 deprived the Chapter 13 Trustee, and any other interested
18 creditor, of the opportunity to examine the potential asset or
19 look into his past transactions with Armamini.

20
21 **C. The Debtor is Using Chapter 13 as a Means of Evading
Lawful Orders of the State Court.**

22 At a hearing in the state court on April 30, 1996, Mayer
23 was order to turn over "forthwith" his Ping golf clubs and his
24 Taylor Made metal woods to the judgment creditor, Schiro. Meyer
25 ignored the order. When he filed bankruptcy, he listed the golf
26 clubs as an asset on Schedule B and then promptly claimed them
27 exempt on Schedule C. Certainly, the two-and-a-half months that
28

1 elapsed between the turnover order and the filing of bankruptcy
2 is sufficient time for Meyer to have complied with the state
3 court's order. He simply chose not to. Chapter 13 cannot be
4 used as a means of shielding such wrongful conduct.

5 Similarly, on June 20, 1996, Schiro served Meyer Stereo
6 Inc. with an Earnings Withholding Order pertaining to the wages
7 of the debtor. Pursuant to the terms of the order, the employer
8 is required to mail a return to the sheriff within 15 days of
9 being served. Nothing was done. It appears that Meyer is the
10 sole officer, director and shareholder of Meyer Stereo, Inc.
11 and, as such, it is reasonable to infer that he once again chose
12 to ignore an order of the state court. Chapter 13 does not
13 exist to condone such behavior.

14 **IV. CONCLUSION**

15 Meyer's conduct demonstrates that he has attempted to abuse
16 the bankruptcy process. By omitting creditors with substantial
17 claims and concealing assets, he has prevented the complete and
18 honest evaluation of his financial situation the Bankruptcy Code
19 requires. In examining all of the circumstances surrounding
20 Meyer's filing, the court can only conclude that he has acted in
21 bad faith. The objection is sustained and the case is
22 dismissed. The dismissal is without prejudice and Meyer may
23 file bankruptcy in the future at an appropriate time.

24 DATED: _____
25 JAMES R. GRUBE
26 UNITED STATES BANKRUPTCY JUDGE
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