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Monday, November 19, 2001  
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In re

BASSEM and LAILA MOUSSA,

No. 99-11754

[Debtor](#) <sup>i</sup>(s).

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## **Memorandum**

This [Chapter 13](#) <sup>i</sup> case was originally filed as a [Chapter 7](#) <sup>i</sup> case in 1999. After breaching an agreement the debtors reached with the Chapter 7 [trustee](#) <sup>i</sup> and as the trustee was marketing their home, the debtors exercised their right to convert the case to Chapter 13. The Chapter 13 trustee, the former Chapter 7 trustee and the IRS objected to the proposed Chapter 13 [plan](#) <sup>i</sup>. Despite serious misgivings as to the debtors' good faith motivations, the court set an evidentiary hearing on the debtors' proposed Chapter 13 plan and gave the debtors extra time, as requested, for them to conduct discovery. The court ordered that direct testimony at the hearing was to be in the form of declarations filed and served at least

five days before the hearing. The debtors conducted no discovery and failed to submit any declarations. They have accordingly failed to prove that their plan meets the requirements of § 1325 of the [Bankruptcy Code](#) for [confirmation](#). The debtors have argued the serious health problems of debtor Bassem Moussa as an extenuating circumstance, and blame their failure to perform the agreement they reached with the Chapter 7 trustee on these problems. However much sympathy the court may have, such health problems compel the court to deny confirmation. Section 1325(a)(6) of the Code requires the court to find that the debtors will be able to make all of the payments under the plan and comply with the plan before the court can confirm the plan. Bassem Moussa's health problems make it more likely than not that the debtors would be unable to make the payments and comply with the plan even if the court were to find that their proposed plan was otherwise confirmable. The extended period proposed by the debtors for refinance of their home - first four years, then a proposed amendment to two years - demonstrates that the debtors are motivated by intent to delay matters as long as possible rather than a good faith desire to confirm a meaningful Chapter 13 plan. Interest rates are now at their lowest point in decades; there is no reasonable basis for a delay of several years before refinancing. Taken together, the actions of the debtors compel the court to a finding that they converted this case to Chapter 13 in order to thwart the trustee's marketing of their home and remain on the premises as long as possible. This is not a proper use of Chapter 13 proceedings. Accordingly, the objections to confirmation will be sustained, and this case will be converted back to Chapter 7. Counsel for the former Chapter 7 trustee shall submit an appropriate form of order.

Dated: November 19, 2001

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Alan Jaroslovsky

U.S. Bankruptcy

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