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Monday, January 15, 2001

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

FRANK E. PAGANO,

No. 98-11035

[Debtor](#) (s).

Memorandum on Motion for Entry of Discharge

Debtor Frank Pagano filed a [Chapter 13](#) petition on March 25, 1998. He proposed a pro tanto ("pot") [plan](#) whereby he would pay \$100 per month for 36 months. The plan was confirmed on July 1, 1998. On August 21, 1998, the California Uninsured Employers' Fund ("UEF") filed a [priority claim](#) for \$157,910.00 based on a Workers Compensation Award dated January 22, 1998. Although the UEF had been duly listed as a [creditor](#), it had not objected to Pagano's plan even though the plan could not come close to satisfying its priority claim. Section 1322(a)(2) of the [Bankruptcy Code](#) provides that a Chapter 13 plan shall provide for the payment in full of all priority claims. On November 3, 2000, the court overruled Pagano's objection to the UEF claim.⁽¹⁾ It made no order on the effect of the ruling on Pagano's confirmed plan. Pagano has now made all the payments required of him by his confirmed plan. He now seeks entry of his Chapter 13 discharge pursuant to § 1328(a) of the Code which provides, in pertinent part:

(a) As soon as practicable after completion by the debtor of all payments under the plan . . .

the court shall grant the debtor a discharge

The UEF objects on the grounds that its priority claim has not been paid in full, even though it stood by silently while the plan was confirmed and never, during the three-year life of the plan, sought revocation of [confirmation](#) or dismissal of the case. Had the UEF opposed confirmation, the court would not have confirmed the plan. However, once a plan is confirmed it is binding even if it contains improper terms. *In re Ivory*, 70 F.3d 73, 75 (9th Cir. 1995); *In re Pardee*, 193 F.3d 1083, 1086 (9th Cir.1999). Had the UEF sought timely revocation of confirmation or made a motion to dismiss the case before Pagano completed his payments, the court would have considered the matter and might have granted relief. However, the UEF did neither. It took no action beyond the filing of its claim, even though it knew that Pagano's payments could never satisfy more than a small percentage of the claim.

The UEF cites in support of its position *In re Goude*, 201 B.R. 275 (Bankr.D.Ore.1996). In that case, the court held that the debtors were not entitled to a discharge even though they had made all of their Chapter 13 plan payments because they had not paid all priority claims in full. That was the same result as the Seventh Circuit reached in *In re Escobido*, 28 F.3d 34 (7th Cir. 1994). However, *Escobido* was specifically rejected by both the BAP and the Ninth Circuit in *Pardee*. 218 B.R. at 926; 193 F.3d at 1086-7. The rule in *Goude* is not good law in this circuit in light of *Pardee*. For the foregoing reasons, Pagano's motion for entry of his discharge will be granted. Counsel for Pagano shall submit an appropriate form of order.

Dated: January 15, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. A subsequent contrary ruling by Bankruptcy Judge Newsome has caused this court to question the correctness of that ruling. However, the court need not revisit the issue in light of Pagano's completion of his pla

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