

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re: ) Case No. 01-18811  
)  
ELBERT HOGAN AND ) Chapter 13  
CELESTE HOGAN, )  
) Judge Arthur I. Harris  
Debtors. )

ORDER (1) INDICATING ELBERT HOGAN'S CASE IS NOT YET  
CONVERTED TO CHAPTER 7 AND (2) REQUIRING CELESTE HOGAN TO  
FILE AMENDED MOTION FOR HARDSHIP DISCHARGE OR MOTION  
WILL BE DENIED

The Hogans originally filed this joint Chapter 13 case on September 7, 2001. An order confirming their Chapter 13 plan (Docket #22) was entered on February 12, 2002. On October 25, 2005, Mr. Hogan filed a notice of conversion to Chapter 7 (Docket #65), attempting to split the case. The case, however, is not yet split, and Mr. Hogan has not successfully converted his case to Chapter 7. The case cannot be converted until the Court rules on Mr. Hogan's recently filed motion to split (Docket #69), and if the motion is granted, Mr. Hogan pays the required fee for splitting a joint case. Once those steps are accomplished, Mr. Hogan's Chapter 13 case can be voluntarily converted to Chapter 7 pursuant to his prior notice of conversion.

Currently at issue before the Court is Mrs. Hogan's motion requesting a hardship discharge pursuant to subsection 1328(b) (Docket #63) filed on

October 3, 2005. The motion indicates that Mrs. Hogan is seeking a hardship discharge because Mr. Hogan is no longer in the case (as discussed above, Mr. Hogan is still in the case) and because Mrs. Hogan is losing her home. The trustee filed a response (Docket #68) indicating the motion does not offer sufficient justification for a hardship discharge pursuant to subsection 1328(b).

Subsection 1328(b) states in pertinent part:

[T]he court may grant a [hardship] discharge to a debtor that has not completed payments under the plan only if—

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

The Court agrees with the Chapter 13 trustee. Mrs. Hogan's motion does not provide sufficient argument or supporting evidence for the Court to make a finding of any of the three requirements listed above. Thus, Mrs. Hogan's motion (Docket #63) will be denied unless she files an amended motion which

- (1) specifically addresses each of the requirements found in subsection 1328(b) and
- (2) alleges facts which the Court and parties in interest can evaluate in determining

whether Mrs. Hogan is eligible for a hardship discharge pursuant to subsection 1328(b). Any amended motion shall be filed on or before January 6, 2006.

IT IS SO ORDERED.

/s/ Arthur I. Harris                      12/14/2005  
Arthur I. Harris  
United States Bankruptcy Judge