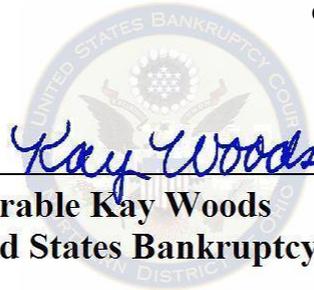


2008 May 16 PM 04:46

CLERK U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
YOUNGSTOWN

IT IS SO ORDERED.



Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

ALEX R DANKOVICH and  
DIANE M DANKOVICH,  
  
Debtors.

\*  
\*  
\* CASE NUMBER 07-42655  
\*  
\* CHAPTER 7  
\*  
\* HONORABLE KAY WOODS  
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MEMORANDUM OPINION REGARDING U.S. TRUSTEE'S MOTION TO DISMISS  
Not Intended for National Publication  
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The following memorandum opinion and order are not intended for national publication and carry limited precedential value. The availability of this opinion by any source other than [www.ohnbuscourts.gov](http://www.ohnbuscourts.gov) is not the result of direct submission by this Court. The opinion is available through electronic citation at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov) pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

This cause is before the Court on United States Trustee's Motion to Dismiss Case For Abuse Pursuant to 11 U.S.C. Section 707(b)(1) and 11 U.S.C. Section 707(b)(3) ("Motion to Dismiss") filed by Habbo G. Fokkena, United States Trustee for Region 9 ("UST"), on November 29, 2007. On January 7, 2008, Alex Dankovich and Diane Dankovich (collectively "Debtors") filed Debtor's [sic] Response to United States Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. Section 707(b)(3) [sic].

The Court held an evidentiary hearing on the Motion to Dismiss on April 18, 2008 ("Hearing"). At the Hearing, UST argued that the "totality of the circumstances" demonstrates Debtors' conduct constitutes an abuse of the bankruptcy system. The Court received testimony at the Hearing from Catherine Lowman ("Lowman"), Bankruptcy Analyst in the office of UST, and both Debtors. The Court, having considered all pleadings, arguments, testimony, and exhibits in this case, even if not specifically mentioned in this decision, and having reviewed the entire record in this case, finds that UST has carried his burden of proof that the totality of the circumstances requires dismissal of Debtors' chapter 7 case.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The

following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

### I. FACTS

On October 19, 2007 ("Petition Date"), Debtors filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code. Debtors have three children, who have each reached the age of majority, two of whom live at home and receive their support.<sup>1</sup> Debtors scheduled: (i) total assets of \$141,809.00, of which \$128,000.00 is the value of their residence; (ii) liabilities of \$388,831.00, including \$173,189.00 in secured debt and \$215,642.00 in unsecured nonpriority debt, but no priority unsecured debt. The secured debt relates primarily to the mortgage on Debtors' residence, with the remainder relating to a purchase money security interest in a 2004 Mazda MPV ("MPV") that Debtors testified was used solely by Mr. Dankovich in the operation of his business. Debtors indicate they intend to reaffirm the debts on their residence and the MPV.<sup>2</sup>

The vast majority (*i.e.*, \$176,426.00) of Debtor's unsecured debt is credit card debt, although neither Debtor was

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<sup>1</sup>Debtors support the two youngest children, a twenty year old son and eighteen year old daughter, but they do not provide financial support to their twenty-five year old son, who does not live with them.

<sup>2</sup>On April 3, 2008, the Court held a hearing on a reaffirmation agreement (Doc. # 51) concerning the MPV. The reaffirmation agreement was conditionally approved by the Court, but held in abeyance for seven days in order for Debtors to reconsider whether they wanted to reaffirm that debt in light of their financial circumstances. The Court notes that the reaffirmation agreement was approved on April 14, 2008. Payments under the reaffirmation agreement are \$417.46 per month.

able to recall any specific purchases or otherwise satisfactorily explain how or why they incurred any of the credit card debt. Of the remaining \$39,216.00 unsecured debt, \$38,251.00 constitutes the Debtors' liability for student loans to finance their oldest son's undergraduate education. The remaining unsecured debt of \$965.00 is scheduled as medical and dental debt.

Mrs. Dankovich is a licensed counselor and social worker and has been employed as a guidance counselor in the Canfield schools for the past eight years. She testified that she expects this employment to continue for the foreseeable future. Although she does not work during the summer when school is not in session, Mrs. Dankovich's salary is paid in 26 bi-weekly installments. According to Debtors' Schedule I, Mrs. Dankovich's average monthly income is \$4,328.00. (UST Ex. 2-25.) Mrs. Dankovich testified that she is required to take continuing education ("CE") courses to maintain her licenses, and that each summer she tries to take two CE classes.

Mr. Dankovich is self employed and has operated a home inspection franchise known as Dialex, Inc. ("Dialex") since December 2004, although the business has not been profitable.<sup>3</sup> Mr. Dankovich further testified that, although he looks for part-time and seasonal work by submitting two or three employment

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<sup>3</sup>Mr. Dankovich testified that he purchased the franchise after years of irregular employment in sales, marketing, and management of various medical offices.

applications per month, he has not been able to find employment with a flexible schedule, which he requires to operate Dialex. Mr. Dankovich has monthly income from Dialex of \$3,353.00.

Debtors' combined average monthly income is \$7,681.00. Against this income, Debtors' Schedule J shows total average monthly expenses of \$8,414.00, resulting in a negative monthly net income of \$733.00. (UST Ex. 2-26). The expenses of Dialex account for \$3,122.00 of Debtors' total expenses.

According to Debtors' Form 22, the presumption of abuse does not arise pursuant to § 707(b)(2), as their reported annualized income of \$62,936.16 is less than the median family income for a family of four, *i.e.* \$68,579.00. Unlike a means test analysis, however, in analyzing the totality of the circumstances, the Court may subjectively review Debtors' income and expenses based upon prepetition events and postpetition forecasts. UST's argument for dismissal under § 707(b)(3) focused on Debtors' present or future ability to repay creditors: specifically, Debtors' (i) expenses on Schedule J, (ii) federal income tax refunds, and (iii) under-employment.

## **II. ANALYSIS**

When, as is the case here, the means test does not give rise to a presumption of abuse, § 707(b)(3) provides for dismissal of a debtor's chapter 7 petition, as set forth below:

In considering under paragraph (1) whether the granting of relief would be an abuse of the

provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider--

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse.

11 U.S.C. § 707 (West 2007).

"[T]he two grounds for dismissal under § 707(b)(3) are best understood as a codification of pre-BAPCPA case law[,] and as such, pre-BAPCPA case law applying these concepts is still helpful in determining whether there is abuse pursuant to § 707(b)(3). *In re Wright*, 364 B.R. 640, 643 (Bankr. N.D. Ohio 2007); accord *In re Mestemaker*, 359 B.R. 849 (Bankr. N.D. Ohio 2007), and *In re Simmons*, 357 B.R. 480 (Bankr. N.D. Ohio 2006). However, Congress has changed the standard for dismissal under BAPCPA from "substantial abuse" to "abuse." *In re Fisher*, 2007 WL 2079781 at \*2 (Bankr. N.D. Ohio 2007)("[U]nder BAPCPA, Congress has clearly lowered the standard for dismissal in changing the test from 'substantial abuse' to 'abuse.'"); *In re Wright*, 364 B.R. at 642 ("[A] debtor's Chapter 7 case may [now] be dismissed for just 'abuse,' as opposed to 'substantial abuse' . . . .").

The Sixth Circuit, interpreting pre-BAPCPA § 707(b), held that Congress intended to deny chapter 7 relief to the "dishonest or non-needy debtor." *In re Krohn*, 886 F.2d 123, 126 (6th Cir.

1989). The *Krohn* Court reasoned that a debtor's ability to repay his debts out of future earnings may be sufficient to warrant dismissal based upon lack of need, particularly "where [a debtor's] disposable income permits liquidation of his consumer debts with relative ease." *Id.*, see also *Mestemaker*, 359 B.R. at 856 (Bankr. N.D. Ohio 2007) ("Courts generally evaluate as a component of a debtor's ability to pay whether there would be sufficient income in excess of reasonably necessary expenses to fund a Chapter 13 plan."). The analysis of a debtor's ability to repay his debts will focus on the debtor's "disposable income," i.e. income the debtor does not reasonably need to expend for the maintenance or support of the debtor or his dependents. See 11 U.S.C. § 1325(b)(2) (West 2007). Other factors to be considered in determining whether a debtor is "needy" include:

whether the debtor enjoys a stable source of future income, whether he is eligible for adjustment of his debts through Chapter 13 of the Bankruptcy Code, whether there are state remedies with the potential to ease his financial predicament, the degree of relief obtainable through private negotiations, and whether his expenses can be reduced significantly without depriving him of adequate food, clothing, shelter and other necessities.

*In re Krohn*, 886 F.2d at 126-127.

Courts and commentators alike have recognized that the § 707(b)(3) "totality of the circumstances" analysis requires a bankruptcy court to undertake an analysis of a debtor's "actual

debt paying ability" independent of the means test analysis under § 707(b)(2). *In re Mestemaker*, 359 B.R. at 853-56. As Judge Wedoff, Bankruptcy Judge for the Northern District of Illinois, wrote in the introduction to his leading article on the subject:

[I]f a section 707(b) motion properly raises the question, a bankruptcy judge has a duty to consider the actual financial situation of a debtor who is not subject to a means test presumption; . . . the judge should find abuse where the debtor can repay a sufficient amount of unsecured debt[.] . . . [T]he means test serves to guide, rather than foreclose, such determinations of abuse.

Hon. Eugene R. Wedoff, *Judicial Discretion to Find Abuse Under Section 707(b)(3)*, 71 Mo. L. Rev. 1035, 1037 (2006). The Court's analysis of the totality of the circumstances also allows it to consider both prepetition and postpetition circumstances of the Debtor. *In re Fisher*, 2007 WL 2079781 at \*2 (citing *Trustee v. Cortez (In re Cortez)*, 457 F.3d 448, 455 (5th Cir. 2006)); *In re Mestemaker*, 359 B.R. at 855-56; *In re Hartwick*, 359 B.R. 16, 21 (Bankr. D.N.H. 2007).

Congress also eliminated the pre-BAPCPA express statutory presumption in favor of granting debtor the requested relief. Neither party enjoys a presumption concerning abuse in a post-BAPCPA § 707(b) analysis. See *In re Nockerts*, 357 B.R. 497, 505 (Bankr. E.D. Wis. 2006) ("The UST does not enjoy the benefit of a presumption of abuse when pursuing a § 707(b)(3) motion."); *In re Wright*, 364 B.R. at 642 (Congress eliminated in BAPCPA the

presumption in favor of the debtor, which existed in former § 707(b)). As the party bringing the Motion to Dismiss, therefore, UST carries the burden of proof to demonstrate that dismissal is appropriate under § 707(b)(3). *In re Graham*, 363 B.R. 844, 853 (Bankr. S.D. Ohio 2007); *In re Wright*, 364 B.R. at 642.

#### **A. Debtor's Debts are Primarily Consumer Debts**

The Court finds that UST met the initial threshold under § 707(b)(1) by establishing that Debtor's debts are primarily consumer debts. Debtors checked the box on their Petition that their "[d]ebts are primarily consumer debts . . . incurred by an individual primarily for a personal, family, or household purpose." (UST Ex. 2-1.) Upon direct examination by UST, Mr. Dankovich confirmed that, despite operation of Dialex, Debtors' debts were primarily consumer debts.<sup>4</sup>

#### **B. Debtors' Expenses**

As set forth above, Schedules I and J indicate that Debtors have a negative monthly net income of \$733.00. At first blush, it appears that Debtors would be unable to repay any creditors in a hypothetical chapter 13 plan. However, as discussed below, Debtors have overstated their expenses.

##### **1. Business Debt Repayment**

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<sup>4</sup>Mrs. Dankovich disclaimed any knowledge regarding the Petition, consistently deferring any questions regarding Debtors' finances and bankruptcy filing to her husband. Mr. Dankovich could not identify any credit card purchases for Dialex.

Lowman testified that she examined Dialex's 2007 tax return (UST Ex. 6) and compared it with "WIN 2007 expenses Worksheet.xls" ("Worksheet") (UST Ex. 7), which is a spreadsheet of expenses for Dialex prepared by Debtors. Based on this comparison, Lowman testified that the cash expenses for the production of revenue claimed by Dialex differed by approximately \$11,000.00 from the cash expenses paid by Dialex,<sup>5</sup> which indicated that Debtors used cash receipts from Dialex to pay their personal expenses.

Dialex's monthly operating expenses of \$3,122.00 include \$502.00 for "Business Debt Repayment (Business)" (Schedule J), which Lowman testified corresponded with \$501.69 for "Loan Pymt (Capital)" under the heading "LOANS/CREDIT" on the Worksheet. Lowman testified that this "substantiated my thought that there were . . . personal expenses being paid out of the business [revenues] that weren't deducted on the tax return."

Debtors' Schedule F lists two separate entries for credit card debts owed to Capital One, which Mr. Dankovich stated was his personal debt for purchase of the Dialex franchise. Mr. Dankovich admitted that the \$502.00 expense listed on Schedule J: (i) was for payment of the Capital One credit card debt listed in Schedule F; and (ii) was the same expense listed as "Loan Pymt (Capital)" on the Worksheet. He further testified that Debtors had not made any

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<sup>5</sup>This figure does not include depreciation. Lowman testified Dialex's return did not include Form 4562, which separately reports depreciation on fixed assets. As a consequence, she was not able to determine how or on what property depreciation was taken.

payments on this debt since the Petition Date.

Based on Debtors' testimony, it is undisputed that Debtors have double counted the Capital One credit card debt. As a dischargeable unsecured debt, Debtors improperly included the Capital One debt repayment as an expense of Dialex, thereby reducing their disposable income. Accordingly, because the Court finds that Debtors improperly scheduled a monthly expense of \$502.00 for operation of Dialex, Debtors have an additional \$502.00 in monthly income to repay creditors.

## **2. Student Loan Expense**

Debtors also scheduled a monthly expense of \$197.00 for "Student loan" under "Other Installment Payments."<sup>6</sup> Mr. Dankovich testified that he believed only he - rather than his son - was obligated on this loan.

In *In re Reimer*, No. 07-32787, 2008 Bankr. LEXIS 517 (Bankr. N.D. Ohio Feb. 21, 2008), debtors listed their student loan debt repayments as expenses on Schedule J, effectively prioritizing those creditors ahead of their other unsecured creditors. In arguing that their student loan payments were properly scheduled, the *Reimer* debtors argued that "student-loans may be treated differently given that the Bankruptcy Code excepts this type of

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<sup>6</sup> This amount is the monthly payment on a loan taken out for Debtors' oldest son to attend undergraduate school. Mr. Dankovich testified that Debtors also make payments on a "parental plus" loan for their second son to go to college, but no evidence was presented that payments on this debt are listed on Debtors' Schedule J.

debt from discharge." *Id.* at \*6. The court analyzed the Bankruptcy Code's treatment of student loan debt in conjunction with the aim of a "ratable distribution to creditors . . . one of the strongest policies underlying bankruptcy law[.]" *Id.* Although the finding of abuse was based on other factors, this Court agrees with the *Reimer* court's analysis of student loan debt. Specifically, "[t]he fact . . . that an obligation to pay a debt will survive bankruptcy, does not, on that basis alone, mean that a debtor has the right to treat the claim differently. Otherwise, all nondischargeable debts would be entitled to favorable treatment, . . . ." *Id.* at \*8.

Although student loan debts are nondischargeable absent a showing of undue hardship, they are not priority debts. See 11 U.S.C. §§ 523(a)(8) and 507 (West 2007). "When a creditor is afforded [priority] for its claim, [it] comes directly at the expense of the debtor's other creditors." *In re Reimer*, 2008 Bankr. LEXIS at \*8. A nondischargeable debt does not receive priority treatment, but rather merely "allow[s] the creditor to pursue, at the conclusion of the [bankruptcy] case, its nonbankruptcy-law remedies against the debtor." *Id.* at \*9.

Debtors cannot use a nondischargeable obligation to repay student loans to effectuate a negative net monthly income and, thus, avoid repaying their creditors. To do so is the equivalent of improperly according priority status to such debt, in violation

of the Bankruptcy Code's priority scheme. Although nondischargeable, student loan debt has the same priority as Debtors' other unsecured debt on Schedule F. Accordingly, the Court finds that Debtors' disposable income is increased by \$197.00 per month, in addition to the \$502.00, discussed above.

### **C. Debtors' Tax Refund**

The uncontroverted testimony of Lowman established that Debtors received a tax refund ("Refund") in 2007 of approximately \$3,400.00 for the 2006 tax year. If Debtors' federal income taxes had not been over-withheld, Debtors' average monthly income would increase by approximately \$283.00 ( $\$3,400.00 \div 12 = \$283.33$ ). Debtors' 2007 federal income tax return (UST Ex. 5) reflects an anticipated refund<sup>7</sup> in the amount of \$3,966.00, which would increase Debtors' average income by approximately \$331.00 per month ( $\$3966 \div 12 = \$330.50$ ). Although Lowman admitted on cross examination that a reduction in the number of deductions taken by Debtors would result in a smaller refund, Debtors did not testify that they anticipated any such reduction in deductions. Accordingly, the Court finds that Debtors have additional monthly income of approximately \$300.00 as a result of overwithholding.

As set forth above, Debtors' expenses and gross income, if properly scheduled, result in Debtors having a monthly

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<sup>7</sup>There was no testimony regarding whether Debtors had actually received the refund at the time of the Hearing.

disposable income of approximately \$266.00. Schedule J expenses should be reduced by \$699.00 ( $\$502.00 + \$197.00 = \$699.00$ ), which changes the net monthly deficit from \$733.00 to \$34.00. By withholding the correct amount of taxes, Debtors' monthly income increases by approximately \$300.00, which results in a monthly disposable income of approximately \$266.00. Over sixty months, Debtors could repay unsecured creditors \$15,960.00, or a seven percent dividend on Debtors' unsecured debts of \$215,642.00.

#### **D. Debtors' Underemployment**

Mrs. Dankovich testified that, although it "very much varies," she tries to take two classes each summer to maintain her licenses as a counselor and social worker.<sup>8</sup> She further testified that she had not yet enrolled in any classes for the upcoming summer, when she will be helping her 18 year old daughter "get . . . ready for college."

Lowman testified that, according to the Bureau of Labor Statistics, the median income in the home inspection business is \$46,000.00. Dialex, however, has operated at a loss since Mr. Dankovich purchased the franchise in 2004, incurring losses of: (i) more than \$27,000.00 in 2005; (ii) more than \$15,000.00 in 2006.; and (iii) \$412.00 for 2007 (UST Exs. 2-29 and 6-1). Mr. Dankovich testified that he does not expect to see an increase in home

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<sup>8</sup>Mrs. Dankovich admitted that she does not take such summer classes on a full-time basis.

inspections and/or revenues for Dialex in the near future, considering the current state of the housing market.

"When determining a debtor's 'disposable income,' a court may impute income to the debtor when it would be equitable to do so - e.g. when the debtor is voluntarily underemployed." *In re Felske*, No. 07-33014, 2008 Bankr. LEXIS 344, \*9 (Bankr. N.D. Ohio Feb. 6, 2008) (quoting *In re Gonzalez*, 378 B.R. 168, 173 (Bankr. N.D. Ohio 2007)). It is undisputed that Mr. Dankovich's income for the past three years' operation of Dialex has not approached the median income for home inspectors. UST presented no evidence and made no argument that Mr. Dankovich, through operation of Dialex, could have made in any of the past three years, or could make in the future, the median income for a home inspector. Under the circumstances, this Court finds that it would be grossly unfair to impute the \$46,000.00 median income for home inspectors to Mr. Dankovich.

Despite Mrs. Dankovich's testimony that she must take CE classes to maintain her licenses, she acknowledged that these classes do not require attendance on a full-time basis. Furthermore, Debtors presented no evidence that CE classes are offered only during the summer, or that Mrs. Dankovich's schedule would prevent her from attending such classes during the school year. It thus appears that Mrs. Dankovich could find employment during the summer months. Her proffered excuse for not working

this summer, *i.e.* that she must help her daughter prepare for college, strikes the Court as an inadequate reason to fail to seek any employment.

Furthermore, Mr. Dankovich testified that his efforts have focused on finding part-time or seasonal work that would allow him to continue to operate Dialex. The Court questions whether Debtor should be allowed to continue to operate Dialex at a loss at the expense of Debtors' unsecured creditors.

Because neither side offered any evidence concerning Debtors' potential increase in monthly income if Mrs. Dankovich obtained summer employment and/or if Mr. Dankovich broadened his search for employment beyond jobs that accommodate operation of Dialex, the Court is not in a position to determine how much, if any, Debtors might be able to increase their average monthly income. Despite this lack of evidence, however, the Court has the firm and distinct impression that each of the Debtors are voluntarily underemployed, which is another factor in favor of finding abuse under the totality of the circumstances.

#### **E. Additional Considerations**

##### **1. Incurring Additional Debt**

That Debtors fail to completely understand their financial circumstances is evidenced by their testimony that it is their intention to incur approximately \$7000.00 in additional debt to help their two younger children pay for college. Judge Whipple

aptly expressed the sentiments of this Court when she wrote: "While a parent's desire to assist a child who is pursuing a college degree is laudable, a debtor is not free to do so at the expense of his unsecured creditors." *In re Pfahler*, No. 07-30044, 2007 WL 2156401, \*2 (Bankr. N.D. Ohio July 26, 2007) (citing *U.S. Trustee v. Harrelson*, 323 B.R. 176, 179 (Bankr. W.D. Va. 2005)). Although the facts in *Pfahler* showed that debtor was paying living expenses rather than incurring additional debt for tuition, the analysis remains valid and applicable here - *i.e.* it is an abuse of the bankruptcy system for Debtors to incur additional debt to pay for their children's higher education while their unsecured creditors remain unpaid.

## **2. Debtors' Unsecured Nonpriority Debt**

As outlined above, Debtors' Schedule F (UST Ex. 2-18 through 2-22) lists \$176,426.00 in credit card debt. Despite direct questioning by UST, Debtors were unable to describe any purchases that made up more than \$175,000.00 of credit card debt incurred in slightly more than three years. Mrs. Dankovich's testimony indicated a complete lack of knowledge regarding Debtors' finances. Mr. Dankovich was similarly ignorant of the circumstances of the credit card debt, testifying merely that it was incurred for "recurring household expenses." It thus appears that Debtors have been living well beyond their means for quite some time. Debtors' lack of knowledge regarding such a large

amount of unsecured debt further supports a finding that, considering the totality of the circumstances, Debtors' case is an abuse of the bankruptcy system.

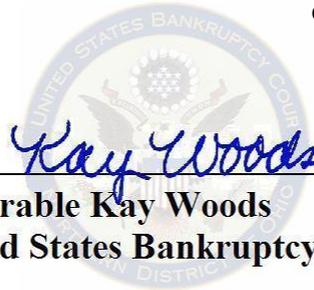
### III. CONCLUSION

The Court finds that, pursuant to § 707(b)(3), the totality of Debtors' circumstances constitutes an abuse of the Bankruptcy Code. Accordingly, the Motion to Dismiss is conditionally granted; however, the Court will provide Debtors ten (10) days to convert their case to one under chapter 13 before entering dismissal.

An appropriate order will follow.

# # #

IT IS SO ORDERED.



Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

ALEX R DANKOVICH and  
DIANE M DANKOVICH,  
  
Debtors.

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\* CASE NUMBER 07-42655  
\*  
\* CHAPTER 7  
\*  
\* HONORABLE KAY WOODS  
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ORDER GRANTING UNITED STATES TRUSTEE'S  
MOTION TO DISMISS CASE FOR ABUSE

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For the reasons set forth in this Court's Memorandum Opinion entered on this date, the Court finds that, based on the totality of the circumstances, as required by § 707(b)(3), it would be an abuse to permit Debtors to continue to proceed under chapter 7. The United States Trustee's Motion to Dismiss Case for Abuse Pursuant to 11 U.S.C. Section 707(b)(1) and 11 U.S.C. Section 707(b)(3) is conditionally granted, as follows: Debtors have ten days from the date of this Memorandum Opinion and Order to convert their case to a proceeding under chapter 13 of the Bankruptcy Code.

If Debtors' case is not converted in that ten-day period, it will be dismissed.

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