

FILED

at ___ O'clock & ___ min ___ M

APR 18 2003

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (33)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Nakeather Ellis,

ENTERED

APR 18 2003

KPD Debtor.

C/A No. 02-04595-W

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court recognizes Nakeather Ellis' ("Debtor") election to convert the case, and, by separate order, the case shall be converted to Chapter 13. In addition, the Court orders that the Chapter 7 discharge issued on October 28, 2002 is conditionally vacated subject to Debtor's confirmation and completion of a Chapter 13 plan. Finally, the Chapter 13 case may not be dismissed absent further Order of this Court after a hearing.

Columbia, South Carolina,
April 18, 2003.


UNITED STATES BANKRUPTCY JUDGE

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ORDER

Debtor.

KPD

Chapter 7

THIS MATTER comes before the Court upon the Motion to Convert Case from Chapter 7 to Chapter 13 (the "Motion") filed by Nakeather Ellis ("Debtor").

Debtor filed Chapter 7 on April 15, 2002 and received a discharge on October 28, 2002.¹ According to Debtor and her counsel, Debtor's financial problems result from a history of substance abuse. As the result of a desire to help their daughter with her medical and financial problems, Debtor's parents apparently refinanced their own home in order to pay off Debtor's mortgage. As a result, the title to Debtor's home was transferred to her parents in December, 2000.

After the Chapter 7 Trustee questioned whether the value of the home exceeded the value paid by Debtor's parents and upon Debtor having now obtained employment, Debtor seeks to convert her case.

As noted in In re Fisher, C/A No. 00-05354-W, slip op. at 2 (Bankr. D. S.C. Jan. 30, 2002), while this Court generally treats a debtor's right to convert a case from Chapter 7 to Chapter 13 as absolute, subject to considering reconversion in appropriate circumstances, the maintenance of a Chapter 7 discharge in a case subject to a further Chapter 13 discharge is inconsistent and therefore the appropriateness of conversion to Chapter 13 after the issuance of a discharge in the case as a

¹ Debtor had a prior Chapter 13 case, Case No. 01-07299, which was dismissed upon Debtor's motion on October 17, 2001.

Chapter 7 should be examined on a case by case basis. Additionally, in order to convert the case, a debtor must be eligible to be a debtor in the chapter to which he or she is converting. See §706(d).

Despite notice of the Motion and hearing, no party in interest objected to the Motion. Debtor's counsel further indicated that the Chapter 7 Trustee was agreeable to the conversion.

In this case, the Court concludes that conversion should not be prohibited. First, no party, including the Trustee, challenged the conversion or raised allegations of Debtor's bad faith or that Debtor will be unable to fund a Chapter 13 plan. Moreover, Debtor asserts that she is an eligible Chapter 13 debtor and that she has not previously converted a case. From the information before it, this Court believes sufficient safeguards may be put in place to allow conversion in such situations while also preventing an abuse of the bankruptcy process. First, once a debtor has converted to Chapter 13, she must show that her Chapter 13 plan is proposed in good faith in order to confirm it. See §1325(a)(3). If there is an issue of a debtor's bad faith, the Chapter 13 Trustee, interested parties, or the Court sua sponte can address this issue at confirmation. Second, in a Chapter 13 case, a debtor must satisfy the Chapter 7 liquidation test under §1325(a)(4) and pay creditors the same value that the Chapter 7 Trustee would have collected and distributed in a Chapter 7 case. A plan that does not provide creditors at least what they would have received in the Chapter 7 case will not be confirmed. For that reason, the Chapter 13 Trustee is requested to investigate the transfer to Debtor's parents. Finally, in situations of bad faith or abuse or upon the failure to achieve confirmation and completion of the debtor's Chapter 13 plan, the Court may consider reconverting the case to Chapter 7. See §1307(c). At the hearing, Debtor and her counsel expressly agreed to waive the right to voluntarily dismiss the Chapter 13 case in lieu of reconversion to Chapter 7 unless ordered by this Court after a hearing.

Therefore, under the circumstances of this case, the Court finds it appropriate to conditionally revoke Debtor's Chapter 7 discharge subject to Debtor achieving a discharge in the case under Chapter 13. It is therefore,

ORDERED, that Debtor's election to convert the case is allowed, and, by separate order, the case shall be converted to Chapter 13. However, dismissal of the Chapter 13 case is barred absent further order of this Court after a hearing in which this Order is considered. Upon default in her Chapter 13 case, the case may be reconverted to Chapter 7 by Order of the Court.

IT IS FURTHER ORDERED that the Chapter 7 discharge issued on October 28, 2002 is conditionally vacated subject to Debtor's confirmation and completion of a Chapter 13 plan. If the case is reconverted to Chapter 7, the Court may reconsider the Chapter 7 discharge.

IT IS FURTHER ORDERED that this Order shall be served upon all creditors and parties in interest in this case, United States Trustee, Chapter 7 Trustee, and the Chapter 13 Trustee for the Charleston Division.

AND IT IS SO ORDERED.

Columbia, South Carolina,
April 18, 2003.


UNITED STATES BANKRUPTCY JUDGE