

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE
 SOUTHERN DISTRICT OF GEORGIA
 Augusta Division

IN RE:)	
)	Chapter 7 Case
ROBERT HAROLD RITZMAN)	Number <u>89-11846</u>
DIANA JANE RITZMAN)	
)	
Debtors)	
<hr style="width: 40%; margin-left: 0;"/>		
)	FILED
UNITED STATES TRUSTEE)	at 12 O'clock & 20 min. P.M.
)	Date: 6-7-90
Movant)	
)	
vs.)	
)	
ROBERT HAROLD RITZMAN)	
DIANA JANE RITZMAN)	
)	
Respondents)	

ORDER OF DISMISSAL

The United States Trustee seeks dismissal of this Chapter 7 proceeding pursuant to 11 U.S.C. §707(b).² Based upon the

¹11 U.S.C. §707(b) provides:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

²11 U.S.C. §707(b) provides:

After notice and a hearing, the court, on its own motion or on a motion by the United

evidence presented at hearing this court makes the following findings of fact and conclusions of law which support the U.S. trustee's motion.

Robert Harold Ritzman and Diana Jane Ritzman hereinafter referred to as "debtors" filed their petition for relief under Chapter 7 of Title 11 United States Code on November 27, 1989. Prior to and after filing, the debtors enjoy a very good income. In calendar year 1989 the debtor, Robert Harold Ritzman received a gross salary of \$50,447.73. The debtors' schedules reveal total unsecured debt of \$26,605.35. With the exception of \$12,178.80 representing a deficiency balance following the foreclosure by the Veterans Administration of the debtors' previous residence, the remainder of the unsecured debt appears to be charge card and medical expenses. The debtors have one secured creditor, Brookland Financial Corp. with a scheduled debt of \$12,900.00 secured by a 1989 Dodge Caravan automobile.

From the schedule of current income and expenses and testimony at hearing the monthly income and living expenses of the debtors can be determined. For calendar year 1989 the debtor Robert Harold Ritzman received a gross salary of \$50,447.73. Total payroll tax deductions including social security equal \$12,983.16 resulting in a net disposable annual income of \$37,464.57 or \$3,122.04 per month. While the amounts of compensation received by the debtor within each category varies, the debtors' total income appears

stable for the future at a figure not less than the gross earnings for calendar year 1989. Monthly living expenses for the debtors' family of four are as follows:

States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

Net disposable monthly income		\$3,122.04
Debtors' projected living expenses		
Rent		450.00
Utilities		310.00
Food		600.00
Clothing		100.00
Laundry and cleaning		25.00
Newspapers/periodicals		30.00
Doctor and medical expenses		250.00
Transportation including payment for Dodge Caravan		565.19
Recreation	75.00	
Insurance		160.00
Taxes		25.00
School lunches		40.00
Church tithe		100.00
Total		<u>\$2,730.19</u>
Remaining income		\$391.85

Bankruptcy Code §707(b) creates a presumption in favor of granting a discharge under Chapter 7 to the debtor. Therefore, the burden of moving forward with evidence of substantial abuse rests with the United States trustee. 4 Collier on Bankruptcy ¶707.08 (L. King 15th ed. 1989). With a presumption in favor of the debtor, the court must give the benefit of any doubt to the debtor and dismiss a case pursuant to §707(b) only when substantial abuse is clearly present. In re: Kelly, 841 F.2d 908, 917 (9th Cir. 1988), 4 Collier on Bankruptcy supra. In this case the United States trustee has met not only the burden of going forward with evidence of

substantial abuse, but also as carrying the burden of persuasion by clear and convincing evidence of substantial abuse. In order to apply §707(b) it is necessary for this court to first determine that (1) the debtor is an individual, and (2) the debts incurred by the individual are primarily consumer debts. In this case the debtors, Robert Harold Ritzman and Diana Jane Ritzman are individuals. Of the total debt, all the secured debt represents consumer debt acquired in the purchase of the Dodge Caravan automobile utilized by the debtors. Regarding the unsecured debt in excess of \$12,000.00 represents a deficiency balance

following the foreclosure of the debtors' former residence and the remainder consists primarily of credit card purchases and medical expenses. The vast majority of the debts are consumer debts.

After this initial determination, in determining whether a Chapter 7 filing constitutes a substantial abuse of the bankruptcy process, the court must consider "(1) whether the debtor has a likelihood of sufficient future income to fund a Chapter 13 plan which would pay substantial portions of the claim of the unsecured creditors; (2) whether the debtor has exhibited any bad faith in the filing of his petitions and schedules or has engaged in 'eve of bankruptcy purchases'; and (3) whether the debtor has suffered an unforeseen calamity, or is merely using Chapter 7 provisions to gain relief from past excesses." 4 Collier on Bankruptcy ¶707.07 (L. King 15th ed. 1989). In making a determination that this Chapter

7 filing constitutes a substantial abuse of bankruptcy process, the principal factor considered is the debtor's ability to repay a substantial portion of the debts for which a discharge is sought, In re: Kelly, supra; In re: Walton, 69 B.R. 150, 154 (E.D. Mo. 1986); In re: Cord, 86 B.R. 5, 7 (Bankr. W.D. Mo. 1986); In re: Gaukler, 63 B.R. 224, 225 (Bankr. D.N.D. 1986); In re: Crest, 57 B.R. 874, 878 (Bankr. D.N.D. 1985); In re: Hudson, 56 B.R. 415, 419 (Bankr. N.D. Oh. 1985); In re: Grant, 53 B.R. 385, 391 (Bankr. N.D. Oh. 1985); In re: Edwards, 50 B.R. 933, 936-37 (Bankr. S.D. N.Y. 1985); In re: White, 49 B.R. 869, 874 (Bankr. W.D. N.C. 1985), and this factor standing alone justifies a §707(b) dismissal. See, In re: Cord, supra at 7; In re: Hudson, supra at 419; In re: Edwards, supra at 937.

Even taking into consideration the debtors' proposed budget with all questions resolved in their favor there remains available approximately \$400.00 per month for the payment of unsecured debt which would generate approximately a 50% dividend to the unsecured creditors over a 36-month period in a Chapter 13 plan. In this case, the debtor Robert Harold Ritzman did experience a period of unemployment and the debtors did lose their prior residence through foreclosure with a result in \$12,000.00 deficiency balance. With the exception of this

deficiency claim of the Veterans Administration, the debtors are not in financial distress. The debtors are not seeking a "fresh start" but the avoidance of the

deficiency obligation.

From the evidence presented, the United States trustee has established that this Chapter 7 bankruptcy proceeding represents a substantial abuse of the bankruptcy process, and this case is ORDERED dismissed.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 7th day of June, 1990.