

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
KIM M. VYVERBERG,
Debtor.

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: Case No. 90-1463-D H
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: Chapter 13
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ORDER--OBJECTION TO CONFIRMATION OF PLAN

On September 20, 1990, a hearing was held on the Objection to Confirmation of Chapter 13 Plan filed by the Iowa College Student Aid Commission (herein "ICSAC"). The following attorneys appeared on behalf of their respective clients: Michael A. Williams, Williams and Buckrop, Attorneys at Law, for Debtor; and Scott M. Galenbeck, Assistant Attorney General, State of Iowa, for ICSAC. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). The Court, upon review of the pleadings, arguments of counsel, and submitted briefs, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS

1. An order for relief under Chapter 13 of the Bankruptcy Code was entered on May 31, 1990.
2. A plan was filed with the petition. In this plan Debtor proposed paying the sum of \$100.00 monthly for a term

of 36 months. Debtor scheduled secured debt in the amount of \$2,390.00 for a co-signed loan on an automobile. This secured debt was to be paid in full. Debtor scheduled unsecured debt in the total amount of \$46,630.00. Debtor's testimony reveals that this amount included interest at the end of the repayment of her student loans. All of this unsecured debt was for student loans and these creditors were to receive nothing under the plan.

3. ICSAC filed its objection on July 13, 1990.

4. Debtor then filed her modified plan. Debtor proposed in this plan to pay the sum of \$160.00 per month for 36 months. The secured co-signed claim of Bettendorf Bank in the amount of \$2,390.00 was to be paid in full. The allowed unsecured claims were to be paid 4 percent.

5. Debtor is 27 years of age, single, and has no dependents.

6. She is employed as a family counselor at the Wittenmyer Youth Center, Davenport, Iowa. She has been employed there since April 1989, and has received a raise so that her annual salary is approximately \$17,500.00.

7. Debtor graduated from high school in 1981. She commenced college that fall. Her goal was to obtain a degree in psychology.

8. Debtor received a degree in psychology in 1988, after having terminated her studies toward a degree in

chiropractic medicine.

9. From 1982 through 1987 Debtor received seven student loans in the total principal amount of \$27,291.00. (Exhs. B-H).

10. Debtor has been continuously employed since receiving her degree. Her current employment utilizes her bachelors degree in psychology.

11. Debtor has made two payments on the above student loan debt to ICSAC in the total amount of \$100.00. Debtor testified that she made efforts to consolidate her loans; the monthly payments under a consolidation would be slightly more than \$260.00 per month; and, she could not afford those payments.

12. Debtor's current net monthly income exceeds her total monthly expenses in the amount of \$161.00.

13. ICSAC is an agency of the state of Iowa pursuant to Iowa Code Chapter 261. ICSAC guarantees payment of defaulted loans and holds all of the loans evidenced by a Exhibits B-H in the total principal amount of \$27,291.00.

DISCUSSION

The only issue presented to the Court is whether Debtor's modified plan is proposed in good faith. ICSAC argues that the modified plan was not proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

11 U.S.C. §.1325(b) allows a court to confirm a plan in which the debtor uses all of her disposable income for three years to make payments to her creditors. In addition, a court must consider whether a plan constitutes an abuse of the provisions, purpose, or spirit of Chapter 13. Education Assistance Corp. v. Zellner, 827 F.2d 1222, 1227 (8th Cir. 1987). A bankruptcy court must look at factors such as whether the debtor has stated her debts and expenses accurately; whether she has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether she has unfairly manipulated the Bankruptcy Code. Id.

11 U.S.C. § 1328(a)(2) was amended to provide that student loans in Chapter 13 cases filed after November 5, 1990, are dischargeable only if the requirements of 11 U.S.C. § 523(a)(8) are met. Student Loan Default Prevention Initiative Act of 1990, Pub.L.No. 101-508, 1990 U.S. Code Cong. Admin. News (104 Stat.) 1388-28. Debtor's Chapter 13 case was filed May 31, 1990; therefore the amendment does not affect this case.

The modified plan provides that all of the Debtor's disposable income will be used to make payments for the three-year term of her plan in accordance with 11 U.S.C. § 1325(b) (1990). The modified plan further provides the Debtor shall deliver copies of her federal tax return to the standing trustee for review and determination if payments should be

increased.

A review of the modified plan and testimony at the hearing does not reveal any abuse of the provisions, purpose, or spirit of Chapter 13 before the 1990 amendment. The Debtor did attempt to consolidate and repay her obligations over a longer term, but found she could not afford those payments. The Debtor has stated her debts and expenses accurately. There does not appear to be any attempt on the part of the Debtor to mislead the Court by fraudulent misrepresentation; nor does it appear that the Debtor unfairly manipulated the Bankruptcy Code. Therefore, this Court finds that the plan has been proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1325(a)(3) (1990).

ORDER

IT IS ACCORDINGLY ORDERED that the Debtor's Chapter 13 plan is confirmed.

Dated this 30th day of August, 1991.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE