

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LORRAINE MARIE SUNDERMAN,
Engaged in Farming,

Case No. 86-3397

Debtor.

ORDER ON MOTION TO DISMISS

On July 8, 1987 a hearing on motions to dismiss brought by the standing Chapter 12 trustee and by the City National Bank of Shenandoah was held in Council Bluffs, Iowa. The motions were filed on March 31, 1987 and April 27, 1987 respectively. C.R. Hannan appeared on behalf of the debtor. G. Rawson Stevens appeared on behalf of the Bank. Elizabeth A. Nelson, standing Chapter 12 trustee appeared. The record includes the transcript of the hearing and the documentary evidence offered and received at the hearing.

The debtor filed for protection under Chapter 12 on December 31, 1986.

The Code defines "family farmer" as an:

individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such

individual and spouse receive from such farming
operation more than 50 percent

of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or ...

11 U.S.C. § 101(17)(A)(emphasis added). Since the debtor filed in 1986, the operative year with respect to the eligibility question is 1985. In re Shepherd, 75 B.R. 501 (Bankr. N.D. Ohio 1987).

Most of the testimony and documentary evidence presented by the parties concerned Ms. Sunderman's farming activities in 1986. Hence, the court has an insufficient record upon which to render a decision. Although a court typically must view the facts alleged in a voluntary bankruptcy petition in a light most favorable to the debtor when considering a motion to dismiss, the debtor nevertheless must establish that she is entitled to Chapter 12 relief.

WHEREFORE, given the status of the record, the motions to dismiss are neither granted nor denied.

IT IS HEREBY ORDERED that the parties assess debtor's eligibility using 1985 as the taxable year and, within twenty days of this order, advise the court whether eligibility is still in issue and a further hearing is required.

Signed and filed this 18th day of November, 1987.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE