

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In the Matter of

Case No. 98-3099-CI

ELSIE NICHELLE SMITH,

Chapter 13

Debtor.

ORDER TRUSTEE'S OBJECTION TO PLAN

This case pends upon Trustee's Objection to Debtor's Chapter 13 Plan. This matter came on for hearing on November 3, 1998, the debtors appearing by their attorney of record, Michael L. Jankins, and the trustee appearing by his attorney of record, Elizabeth E. Goodman.

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and by order of the United States District Court, Southern District of Iowa. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(L).

FINDINGS

Debtor filed her Chapter 13 Petition on July 13, 1998. She scheduled total unsecured nonpriority debt in the amount of \$19,382.00. She scheduled USA Group Loans in the amount of \$4,900.00. The consideration for this claim was shown as "student loan." The other unsecured debt consisted of loans and credit card debt.

Debtor filed her plan on July 22, 1998. This plan provides that creditors holding unsecured claims "shall be paid on a pro-rata basis which shall be approximately \$.46 cents

on each dollar.” No interest accruing after the date of filing of the petition was to be allowed on these claims.

The plan then went on to provide in Paragraph (5)(A) as follows: “The unsecured claim of USA Group which is a long term student loan debt, shall be paid directly by the debtor outside the plan.”

DISCUSSION

Trustee objects to the student loan provision on the basis that classifying the student loan in this manner constitutes a preference which unfairly discriminates against the general unsecured creditors.

A chapter 13 plan may designate one or more classes of unsecured claims in the same manner authorized under chapter 11. 11 U.S.C. §1322(b)(1). However, the plan may not unfairly discriminate against any class of claims. 11 U.S.C. §1322(a)(3).

This court previously held in Matter of Foreman, 136 B.R. 532 (Bankr. S.D. Iowa 1992) that the separate classification of student loan debts and payment of student loan debt with secured debts did not constitute an unfair discrimination where the plan provided for a 100% repayment of all unsecured claims.

The Eighth Circuit in In re Groves, 39 F.3d 212 (8th Cir. 1994) held that a chapter 13 plan which provided substantially different treatment of student loans whereby student loans were to be preferentially repaid to the prejudice of other unsecured claims violated the provisions of 11 U.S.C. §1322.

The Eighth Circuit agreed with the reasoning of the bankruptcy court and the district court, in distinguishing between child support claims and student loan claims, by quoting as follows:

With respect to student loan obligations, however, public policy does not dictate full payment of such debts during the life of the plan. Thus, there is nothing to stop a debtor from carrying out a Chapter 13 plan without separate classification of these claims. The debtor need only formulate a plan which pays student loan debtors pro rata with other unsecured creditors during the life of the plan and as a continuing obligation thereafter. Alternatively, the debtor may treat the student loan obligation as a long term indebtedness under § 1322(b)(5), curing arrearages within a reasonable time and thereafter maintaining regular payments... Absent a showing that discriminatory treatment is necessary for the debtor to complete his Chapter 13 plan, separate classification of student loan and general unsecured obligations cannot be permitted under the Bankruptcy Code.

Groves, 39 F.3d at 215.

The court concludes that Trustee's objection to the plan must be sustained as there has been no showing the discriminatory treatment is necessary for the debtor to complete her Chapter 13 plan.

IT IS ACCORDINGLY ORDERED that Trustee's objection to the plan is sustained and Debtor's plan is not confirmed.

Dated this 14th day of December, 1998.

Russell J. Hill, Chief Judge
U.S. BANKRUPTCY COURT