UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In re: Dickinson & Co.,	**:**	**Case No. 99-1039-CH**
	:	
Debtor.	**:**	
	:	**Chapter 7**
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ORDER – MOTION TO DISMISS INVOUNTARY CASE

Hearing on the Motion to Dismiss the Involuntary Chapter 7 Case was held on August 3, 1999. The petitioning creditors were represented by Curtis G. McCormick and John H. Neiman, both of Neiman, Stone, and McCormick, P.C., and the debtor was represented by August B. Landis of Whitfield and Eddy, P.C. At the conclusion of the hearing, the court took the matters under advisement. The court considers the matters fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S.C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. The petitioning creditors are four individuals holding arbitration awards confirmed by judgment. Michael F. Glazer, Esquire, claims $23,500; Barry S. Rothman, M.D., claims $102,460; Steven M. Slovan, claims $7,144, and Jay Weiner, M.D., claims $18,800.

2. The debtor is Dickinson & Co., (Dickinson) an Iowa corporation with its principal place of business located in Des Moines, Polk County, Iowa. Prior to 1997, Dickinson was a registered securities brokerage firm.

3. Thomas Swartwood is the principal officer and self-described acting President of the debtor.

4. Sometime during 1997, Dickinson ceased operations as a securities broker.

5. Sometime prior to 1997, Dickinson began formulating a plan to liquidate all of its remaining assets and distribute the proceeds to its creditors.

6. On or about June 6, 1997, Dickinson began contacting its creditors to solicit their participation in the liquidation and distribution plan.

7. On January 25, 1999, Dickinson had approximately 150 creditors with claims ranging from $100 to in excess of $100,000. (Exh. A).

8. There is evidence to indicate that there were transfers to insiders.

9. On or about January 25, 1999, Dickinson proposed a settlement of $15,500 in full payment of all claims of the petitioning creditors. Dickinson asserted that this amount reflected the total that would be available to the petitioning creditors through a Chapter 7 bankruptcy.

10. On January 29, 1999, counsel for the petitioning creditors rejected Dickinson's settlement offer and countered with a proposal of $110,000 for payment in full. Counsel for the petitioning creditors indicated that if the settlement offer was not accepted by February 2, 1999, then Mr. Swartwood would be served with a bankruptcy petition. (Exh. B).

11. Sometime in mid-February 1999, Dickinson verbally offered $25,500 to the petitioning creditors as payment in full.

12. On February 16, 1999, counsel for the petitioning creditors rejected Dickinson's verbal offer, and countered with an offer of $62,000. This offer was to expire on February 19, 1999.

13. On March 23, 1999, through counsel, Dickinson offered to settle for $30,000.

14. On March 23, 1999, the petitioning creditors filed an involuntary Chapter 7 petition for Dickinson in the U.S. Bankruptcy Court for the Southern District of Iowa.

DISCUSSION

The petitioning creditors filed an involuntary Chapter 7 petition for Dickinson pursuant to 11 U.S.C. § 303. Section 303 provides in pertinent part:

> (b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title-
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> > (1) by three or more entities each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least $10,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;
> > (2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $10,775 of such claims;
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> (h) ... [T]he court shall order relief against the debtor in an involuntary case under the chapter under which the case was filed only if –
>
> > (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute;
> > 11 U.S.C. § 303 (1999).

Under the Bankruptcy Code, "'person' includes individual, partnership, and corporation." 11 U.S. C § 101(41) (1999).

Dickinson does not argue that the petitioning creditors have failed to meet the requisites of § 303(b). Nor does it argue that it is currently paying its debts as they come due, or that unpaid debts are subject to a bona fide dispute. Rather, Dickinson contends that the petition was filed in bad faith and should be dismissed pursuant to § 707(a). Essentially, the argument is that the petitioning creditors commenced the involuntary bankruptcy to embarrass or harass the debtor, or in retaliation for not capitulating to their settlement "demands." Dickinson argues that the conduct of the petitioning creditors during the negotiations for settlement of the claims is evidence of such bad faith.

Section 707 states in relevant part:

> (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause ... 11 U.S.C. § 707 (1999).

The involuntary case for Dickinson was commenced under Chapter 7, and is, therefore, subject to dismissal under § 707 for cause. See In re Sky Group International, Inc., 108 B.R. 86 (Bankr. W.D. Pa. 1989). Good faith is presumed on the part of parties filing an involuntary petition, and the burden of proving bad faith is on the objecting party. In re Crown Sportswear, Inc., 575 F. 2d 991, 993-94 (1st Cir. 1978); In re CLE Corp., 59 B.R. 579, 583 (Bankr. N.D. Ga. 1986); In re LaRoche, 131 B.R. 253, 256 (D. R.I. 1991); In re Amburgey, 68 B.R. 768, 774 (Bankr. S.D. Ind. 1987); In re Manhattan Industries, 148 B.R. 398, 406 (Bankr. M.D. Fla. 1997); see also Basin Elec. Power Coop. V. Midwest Processing Co., 769 F.2d 483, 486 (8th Cir. 1985) cert. denied 474 U.S. 1083, 106 S.Ct. 854 (1986). The Eighth Circuit has determined that "some conduct constituting cause to dismiss a Chapter 7 petition may be readily characterized as bad faith." Huckfelt v. Huckfeldt (In re Huckfeldt), 39 F.3d 829, 831 (8th Cir. 1994). However, the court takes a "narrow, cautious approach to bad faith" for § 707(a) dismissal. Id. Under 707(a), bad

faith is to be limited to "extreme misconduct falling outside the purview of more specific Code provisions, such as using bankruptcy as a 'scorched earth' tactic against a diligent creditor, or using bankruptcy as a refuge from another court's jurisdiction." Id. (citing with approval the analysis of In re Khan, 172 B.R. 613 (Bankr. D. Minn. 1994).

In this case, the petitioning creditors' actions do not rise to the level of "extreme misconduct." The petitioning creditors allege claims of $151,904. On or about January 25, 1999, Dickinson offered to pay the petitioning creditors $15,100, contending that this amount was the most that they could expect to receive in a bankruptcy proceeding. (Exh. A). In response to this initial settlement offer, the petitioning creditors acknowledge the validity of Dickinson's calculations, but point out that potential preferential transfers were made based on a different calculation. (Exh. C). The petitioning creditors offer to settle their claims for $110,000. The negotiations proceed to a point where Dickinson has raised its offer to $30,000 and the petitioning creditors have lowered theirs to $45,000. (Exh. D). Presumably, at this point an impasse is reached. Dickinson is unwilling to raise its offer, and the petitioning creditors are unwilling to lower theirs any further. (Exh. D). The court views these exchanges and the accompanying innuendoes as characteristic of settlement negotiations. Posturing and taking extreme positions are common in settlement negotiations and do not rise to the level of bad faith. In re CLE Corp., 59 B.R. at 584. The court concludes that Dickinson has not proven bad faith by the petitioning creditors.

ORDER

IT IS ACCORDINGLY ORDERED that Dickinson & Co.'s Motion to Dismiss the involuntary Chapter 7 case is DENIED.

Dated this _____ day of December, 1999.

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RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT