

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

NORMAN PHILLIP BRUMBAUGH,
CHARLOTTE LEE BRUMBAUGH,
Engaged in Farming,

Case No. 87-1082-C

Chapter 12

Debtors.

ORDER

On November 2, 1987 a hearing on confirmation of plan was held in Des Moines, Iowa. The standing Chapter 12 trustee, the Farmers Home Administration (FmHA), and the United States Trustee previously had filed objections to the plan. The debtors' attorney, Michael R. Brown, did not appear. Appearances were made by the debtors; Anita Shodeen, standing Chapter 12 trustee; David P. Miller, attorney for the United States Trustee; and Linda R. Reade, Assistant United States Attorney, appearing on behalf of the FmHA.

This matter presents a distressing case of neglect on the part of the debtors' attorney. The most grievous act of omission is his failure to appear at the confirmation hearing. The record reveals that on October 6, 1987, the court's October 1, 1987 order notifying the parties of the time and location of the hearing was mailed to the debtors' attorney. The certificate of mailing is dated October 6, 1987. Moreover, the debtors indicated to the undersigned's law clerk that they had spoken to their attorney about the hearing and that the attorney was aware of the hearing date.

Finally, the date and time of the hearing were noted at the preliminary hearing on October 1, 1987. The importance of a confirmation hearing cannot be understated. The economic livelihood of the debtors is at stake. Hence, cavalier treatment of confirmation hearings cannot be tolerated.

The court's concern might have been tempered had not the debtors' attorney exhibited indifference with respect to other aspects of the case. The court notes that the debtors' plan was filed more than a month after expiration of the 90-day filing date imposed by 11 U.S.C. section 1221. The court also observes that counsel failed to appear at the preliminary hearing. An attorney with no court authorization and no knowledge of the case appeared in his stead. Consequently, the primary objective of preliminary hearings.--the avoidance of protracted hearings by means of issue identification and resolution--was thwarted. Further, the information contained in the schedules regarding the debtors' fee arrangement with counsel is at odds with the debtors' testimony. The debtors stated on the record that they agreed to pay counsel \$5,000.00 for his services and that \$2,400.00 had been paid. The schedules disclose that \$1,000.00 had been paid and that services would be rendered at a rate of \$75.00 per hour. Finally, the court notes that the debtors' attorney failed to submit written arguments with respect to outstanding objections in violation of the court's October 1, 1987 order. There has been no attempt to amend what is on its face an unconfirmable plan in an effort

to meet the objections filed before or at the preliminary hearing.

The standard for determining if an attorney should be appointed as counsel for the debtor is whether the appointment aids in the administration of the estate. Matter of Slack, 73 B.R. 382 (Bankr. W.D. Mo. 1987). Counsel's actions in this case fall far short of this standard.

IT IS THEREFORE ORDERED:

1. That this court's order dated April 29, 1987, provisionally appointing Michael R. Brown as attorney for the debtors, is hereby vacated;
2. That monies remitted to debtors' attorney in payment of fees connected with this case are to be disgorged immediately and turned over to the Clerk of the Bankruptcy Court no later than November 9, 1987;
3. That upon receipt of the monies, the Clerk of Court shall remit the monies to the debtor-in-possession account; and
4. That the debtors have until December 2, 1987 to secure the services of another attorney. If no attorney has filed an application for appointment with this court by that date, the case will be dismissed without prejudice.

Signed and filed this 4th day of November, 1987.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE