

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :
DENISE R. SPINNER, : Case No. 92-03465-D J
Debtor. : Chapter 13
- - - - -

RULING ON ORDER TO SHOW CAUSE

On November 18, 1992 Denise Spinner filed a petition for relief under Chapter 13 of the Bankruptcy Code. On November 23, 1992 the debtor filed an application to pay the \$120.00 filing fee in one installment on or before December 18, 1992. On November 23, the court found that the application met the requirements of Federal Rule 1006(b) (2) of Bankruptcy Procedure and entered an order granting the application.

Debtor filed a Chapter 13 plan on November 18, 1992. The Chapter 13 trustee filed an objection to the plan on December 9, 1992 and withdrew that objection on December 18, 1992. The bankruptcy clerk's office has not entered an order confirming the plan because the filing fee has not been paid.

On January 14, 1993 the court entered an order to show cause why the case should not be dismissed for failure to pay the filing fee as previously ordered.¹ On February 4, 1993 the court heard the matter in Davenport, Iowa. Michael A. Williams, attorney for the debtor, requested that the filing fee be paid from the funds

¹ As of that date debtor had paid only a \$20.00 fee related to her amendment to Schedule F. See paragraph (4) of the Appendix to 28 U.S.C. section 1930.

held by the Chapter 13 trustee.²

The court declines to approve the procedure proposed by debtor's counsel. Section 1930(a) (1) of Chapter 123 of Title 28 of the United States Code provides that a party commencing a case under Chapter 13 of Title 11 must pay a filing fee of \$120.00. Federal Rule 1006(b)(2) of Bankruptcy Procedure permits a bankruptcy court to grant an application to pay the filing fee in installments as long as the number of installments does not exceed four and the final payment is made not later than 120 days after filing the petition. ³ only if cause is established may the court extend the time for the final installment to not later than 180 days after the petition date. 11 U.S.C. section 1325(a)(2) requires full payment of the filing fee before the order of confirmation is entered. Additionally, 11 U.S.C. section 1326(a) (2) indicates the trustee shall distribute payments in accordance with the plan after the plan is confirmed.⁴

² On January 29, 1993 the trustee filed a motion to dismiss wherein he indicated the debtor had failed to appear at the section 341(a) meeting of creditors and had failed to make all required plan payments. As of January 27, 1993, the debtor had paid \$120.00 and payment arrearages totaled \$40.00.

³ Debtor's counsel did not seek an extension of the time originally requested.

⁴ The last sentence of 11 U.S.C. section 1326(a) (2) provides: "If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.". Debtor's counsel relied upon that provision in another case he argued on February 4, 1993. Cf. Matter of Foley, No. 92-02967-D J (Bankr. S.D. Iowa February 17, 1993). In that case, the ruling found section 503(b) did not encompass filing fees mandated by 28 U.S.C. section 1930 (a)(1).

WHEREFORE, the court finds that the debtor failed to satisfy the order to show cause.

Dated this 17th day of February, 1993.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE

Even if such filing fees could be construed as 503(b) claims, the trustee would not make such a deduction except in a situation where the plan had not been and would not be confirmed. Payment of the filing fee in this case would result in entry of an order of confirmation.

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF IOWA

IN THE MATTER OF: Denise Spinner

Ch. 13 Bankr. No. 92-03465-D J

Hearing On: Order to Show Cause Why Case Should Not be Dismissed and Any Discharge Entered in the Interim Revoked.

Appearances: Trustee Albert C. Warford Trustee's Atty. _____
Debtor's Atty. _____ Plaintiff's Atty. _____
Creditor's Atty. _____ Defendant's Atty. _____

Court Rptr. Shelley Lincoln Disposition _____ Settled _____
_____ Under Advisement _____
_____ Now _____
Tape No. (Tel Hg.) _____ Briefs (___/___/___) _____
Not Recorded _____ Continued / Other _____

Special Instructions to Clerk: _____

ORDER

Based on the ruling filed on February 17, 1993, it is hereby ORDERED that: the case is dismissed.

Hearing Date: **February 4, 1993.**

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE