

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

DEC 30 1994

BARBARA A. EVERLY, CLERK

CHAPTER 7

In re:

ROBERT DUANE BLISS,

Bankruptcy No. 93-12048KC

Debtor

**JUDGMENT**

This proceeding having come on for trial or hearing before the court, the Honorable Paul J. Kilburg, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED that the Application for Rule to Show Cause is DISMISSED based upon Debtor's assurances of compliance, without prejudice against refileing if Debtor fails to cooperate in completing the matter set forth in the Rule to Show Cause.

IT IS FURTHER ORDERED AND ADJUDGED that the Court specifically finds that sanctions against Debtor are authorized under Bankruptcy Rule 7017(f) for failure to appear at a scheduled hearing after having specifically been directed to personally appear.

IT IS FURTHER ORDERED AND ADJUDGED that, by way of sanction, the Court finds that fees in the amount of \$225 in favor of Trustee Thomas McCuskey are awarded and assessed against Debtor.

IT IS FURTHER ORDERED AND ADJUDGED that attorney's fees in the amount of \$100 are assessed against Debtor and in favor of Attorney Jeffrey Taylor.

IT IS FURTHER ORDERED AND ADJUDGED that payment shall be made within 45 days of the date of this Order.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is hereby entered for the foregoing accordingly.



[Seal of the U.S. Bankruptcy Court]

Date of Issuance: 12-30-94

BARBARA A. EVERLY  
Clerk of Bankruptcy Court

By: *Therese A. Golay*  
Deputy Clerk

Recorded: Vol III  
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FOR THE NORTHERN DISTRICT OF IOWA

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IN RE: )  
 ) Chapter 7  
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 ) Bankruptcy No. 93-12048KC  
Debtor. )

BARBARA A. EVERLY, CLERK

**ORDER RE TRUSTEE'S APPLICATION FOR ORDER  
TO SHOW CAUSE WHY DEBTOR SHOULD NOT BE HELD IN CONTEMPT**

On December 22, 1994, the above-captioned matter came on for hearing pursuant to assignment on the Chapter 7 Trustee's Application for Order to Show Cause Why Debtor Should Not Be Held in Contempt. Debtor appeared in person with Attorney Constance Peschang Stannard. The Chapter 7 Trustee Tom McCuskey was present with his attorney Jeffrey Taylor. Also present was U.S. Trustee John Schmillen.

This Chapter 7 Petition was filed December 21, 1993. The first meeting of creditors was held on January 18, 1994. The notes of the § 341 meeting show that inquiry was made by the Trustee as to the status of a retirement plan with Debtor's employer, Archer Daniels Midland Company. This reference states that the attorney for Debtor is to "check on benefits". The original Petition states that Debtor has a 401K plan with his employer that can only be withdrawn if Debtor quits his job, retires or dies. Debtor attributed no value to this Plan in his original schedules. From February, 1994 onward, discussions occurred between the Trustee and counsel for Debtor as to the status of this account including questions of its exempt status and the exact value of this 401K stock investment pension plan.

The present motion is based upon the Trustee's perception that Debtor inadequately cooperated with the Trustee in obtaining information and a turnover of the stock held by Archer Daniels Midland Company. The Trustee states in his Application filed October 27, 1994 that Debtor is required to cooperate with the Trustee pursuant to 11 U.S.C. § 521(3). The Trustee alleges that Debtor has failed to adequately cooperate and as a result, this matter has been held in abeyance since February or March. He urges that it is necessary to complete this matter so that case administration can be completed.

The original hearing was scheduled for November 29, 1994. At the time scheduled for hearing, the Case Trustee and the U.S. Trustee appeared. However, Debtor failed to appear as did his attorney. The Court entered an Order on December 1, 1994 directing that Debtor and his attorney personally appear at a rescheduled hearing to address these matters. The matter was reset for hearing on December 22, 1994. It is this continued

Application for Rule to Show Cause which is now before the Court.

The elements of contempt, as followed in the 8th Circuit, are fully set out in In re Ragar, 3 F.3d 1174 (8th Cir. 1993). In the present case, evidence was presented on Debtor's failure to cooperate with the Trustee in obtaining appropriate information from Archer Daniels Midland Company in order to complete the Trustee's analysis of the value of this 401K pension plan. Based on comments of counsel and the evidentiary record, it is apparent that, with the exception of a request for attorney's fees, the Trustee's primary purpose in initiating these proceedings is to obtain the cooperation of Debtor in order to complete administration of this estate.

After the presentation of some evidence, and pursuant to the record made, the Court made inquiry of Debtor and Debtor's counsel as to whether they would provide full cooperation to the Trustee in the future so that this matter may be resolved. The Court was assured by both Debtor and Debtor's attorney that they would provide whatever information was available and cooperate with the Trustee in resolving these matters. Based upon those assurances, the Court feels that the purposes of the Application have been satisfied. Compliance before the fact and assurances of compliance after the fact do not necessarily negate a finding of contempt. However, based upon Debtor's assurances of complete cooperation with the Trustee in the future, the Court is of the opinion that no function would be served by a technical analysis of this conduct and a possible finding of contempt at this time. As such, the Court does not feel that it is necessary to address all of the specific elements of contempt. The Court chooses rather to deny the Application for contempt based upon Debtor's assurances of cooperation in the future with the provision that the Trustee shall be authorized to refile such Application if Debtor's cooperation is not forthcoming.

The only remaining issue for Court consideration is the Application for Attorney's Fees filed by the Trustee based upon the Trustee's time in pursuing this Rule to Show Cause. The Trustee has sought fees in the amount of \$447.50 plus additional fees for the hearing on December 22, 1994. This time includes the Trustee's fees and the fees for Attorney Taylor, as attorney for the Trustee in these proceedings.

The file reflects that the original order setting this matter for the contempt hearing was entered October 31, 1994. In relevant part, it stated that it is ordered that "Debtor shall appear before the Court on the 29th day of November, 1994 at 9:00 a.m.". The order prescribed notice and specified the location for the proceeding. As such, Debtor was specifically notified that he was required to appear before the Court on the

date specified. Nevertheless, Debtor did not appear nor was any responsive pleading filed in the Court file.

Appearance of a Debtor at a scheduled hearing is critical to the functioning of the Court system. Unexcused failure to appear places additional and unnecessary burdens, not only on the Court, but on opposing parties and counsel, and in this case, the Chapter 7 Trustee and the U.S. Trustee's Office. Sanctions are authorized under the Bankruptcy Rules as a reasonable management tool to insure appearance of the parties and, therefore, the reasonable management of the Court docket, as well as to compensate parties who are inconvenienced and required to incur expense because of the noncompliance of the opposing party. In re Bernard, 85 B.R. 864, 867 (Bankr. D. Colo. 1988). Additionally, reasonable sanctions, including attorney's fees, are specifically authorized under Bankruptcy Rule 7017(f) when a party or parties counsel fails to appear at a scheduled hearing. Under the present state of the record and under the foregoing authorities, it is the conclusion of this Court that it is reasonable under the circumstances to impose sanctions against Debtor for failure to appear at the hearing scheduled on November 29, 1994.

The Trustee has submitted a statement for fees, including his fees and that of his attorney, Jeffrey P. Taylor. (Exhibit 14) The Court finds that the hourly rate is reasonable and that the Trustee and his attorney should be compensated for time which was required to be expended and which would have been unnecessary if Debtor and his counsel had appeared at the scheduled times. As the order of October 31, 1994 specified only that Debtor would appear, the Court feels that it is inappropriate to impose any specific sanction against Debtor's counsel. Therefore, the sanction imposed is exclusively against that of Debtor. The Court finds that the reasonable fee for the Trustee, Tom McCuskey, based on the time schedules submitted in Exhibit 14 is in the amount of \$225. The reasonable fee for Attorney Jeffrey Taylor, as attorney for the Trustee, is in the amount of \$100.

**WHEREFORE**, for the reasons set forth herein, the Application for Rule to Show Cause is DISMISSED based upon Debtor's assurances of compliance, without prejudice against refiling if Debtor fails to cooperate in completing the matter set forth in the Rule to Show Cause.

**FURTHER**, the Court specifically finds that sanctions against Debtor are authorized under Bankruptcy Rule 7017(f) for failure to appear at a scheduled hearing after having specifically been directed to personally appear.

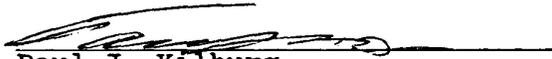
**FURTHER**, by way of sanction, the Court finds that fees in the amount of \$225 in favor of Trustee Thomas McCuskey are awarded and assessed against Debtor.

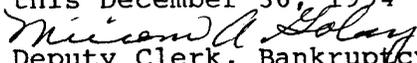
**FURTHER**, attorney's fees in the amount of \$100 are assessed against Debtor and in favor of Attorney Jeffrey Taylor.

**FURTHER**, payment shall be made within 45 days of the date of this Order.

**FURTHER**, judgment shall enter for the foregoing accordingly.

**SO ORDERED** this 27 day of December, 1994.

  
Paul J. Kilburg  
U.S. Bankruptcy Judge

Copy (w/judgment)  
to: Debtor;  
Attorney for Debtor; Constance Stannard  
Trustee: Thomas McCuskey  
U.S. Trustee  
this December 30, 1994  
  
Deputy Clerk, Bankruptcy Court  
PO Box 74890  
Cedar Rapids, IA 52407