

In the United States Bankruptcy Court

for the Northern District of Iowa

DENNIS DEAN WORKMAN

Bankruptcy No. L87-00401C

Debtor(s).

Chapter 7

RADIO DENVER CORPORATION

Adversary No. X87-0167C

Plaintiff(s)

vs.

DENNIS DEAN WORKMAN

Defendant(s)

MEMORANDUM OF DECISION AND ORDER

The matter before the court is a complaint objecting to discharge and seeking to except from discharge defendant's debt to plaintiff. Trial was held on November 2 and 3, 1988 in Cedar Rapids, Iowa.

The court now states the following findings of fact and conclusions of law pursuant to Bankr. R. 7052.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J).

FINDINGS OF FACT

Defendant Dennis Dean Workman (WORKMAN or DEBTOR) filed his voluntary petition under Chapter 7 of the Bankruptcy Code on February 19, 1987.

The debtor has a varied background. Following his graduation from high school in Durant, Iowa, Workman attended Eastern Iowa Community College in Muscatine. After receiving a two-year degree in ag business, he enrolled at the Institute of Broadcast Arts in Milwaukee where he studied broadcasting. While attending the Institute, Workman obtained his third-class radio license. Following his graduation from the Institute, he spent two years in the United States Army where he received numerous awards, not the least of which was the award for being the 1968 9th Army Soldier-of-the-Year. After his discharge, he attended St. Ambrose College in Davenport, Iowa, where he majored in English and philosophy. While a student he was also employed at KWNT AM-FM and WQAD TV. After three semesters, Workman transferred to the University of California at Berkley where he continued to study English. He also continued his work in broadcasting through employment at the campus radio station and by volunteer work at a public radio station. He graduated with honors in English in March, 1973. Thereafter, he moved to Ventura, California where he began to pursue a career in broadcasting. After one year's employment at a radio station, he began studies at California Lutheran where he pursued a degree in secondary education. Subsequently, he also began studies at

Cal State at Northridge where he sought a Master of Arts in mass communications. He also enrolled at UCLA and USC for post-graduate work in mass communications.

While in California, he began employment for Timpanic Sound Co. designing and selling sound systems. He remained with Timpanic for two years, until 1977. He was next employed by Caps TV and Electronics where he was involved in the engineering and sales of sound and video systems. In 1975, while employed for these electronics companies, he began acquiring radio equipment of his own. Next he worked for two years as general manager for American Engineering and Construction in Ventura.

Workman moved to Denver in 1981. The court will delay discussion of the events transpiring after that move and will first discuss property acquisitions by Workman in California because they are relevant to later events.

Workman's first property acquisition was a commercial building at 8597 North Ventura Avenue in Ventura. He acquired this real estate in approximately 1975-76. Also purchased at about that time was a vacant lot which he intended to use as a parking lot to service a restaurant and entertainment complex to be constructed in the commercial building. The purchase price on the building was \$50,000 to \$60,000. Workman does not recall how large a down payment he made on the commercial building but does recall that the seller took back a mortgage. Workman recalls that the parking lot was purchased by paying all or a part of the purchase price in cash. He was not sure, but believed he had paid approximately \$10,000 in cash, part of which were the proceeds of an SBA loan and part of which were his funds.

Following the acquisition of the commercial building, he gutted it and began the construction of improvements. He testified he spent more than \$150,000 improving the building. The parking lot was graded and light stanchions and auto bumpers were installed. He testified he spent between \$35,000 and \$40,000 in parking lot improvements.

In late 1978 or early 1979, Workman bought a four-unit apartment house at 3305 South A, Oxnard, California. The purchase price was \$185,000 or \$195,000. The purchase of the apartment house was financed by the seller through a note and mortgage. At the time of the purchase, the building was run down and existing tenants were not paying rent. Workman lived there for short periods of time while he fixed up the various units.

Workman's next purchase was a single-family residence located at 208 Delaware in Ventura. He acquired it in 1980 at a purchase price between \$75,000 and \$80,000. Again, the seller took back a mortgage, although Workman obtained part of the purchase price from a veteran's loan. Improvements to that property were \$5,000 or less. He was able to rent out the property for approximately \$600 to \$650 per month.

In 1980 or 1981, he purchased a 15-unit apartment house in Rock Island, Illinois for \$125,000. It also needed repair. Workman increased the number of units in the three-story building to 19. He spent approximately \$10,000 to \$15,000 on repairs. The majority of the purchase price was financed by the seller's taking Workman's note and mortgage.

In 1980-1981, Workman purchased a condominium for \$90,000. It was financed by a note and mortgage to the seller for the entire purchase price.

Also in 1980, Workman purchased another four-unit apartment house in Oxnard for a price of \$150,000 to \$160,000. It also was financed in its entirety by the seller taking a note and mortgage. There were no improvements or repairs to the building; it was rented out for approximately \$500 per month.

During the California purchases, Workman, at his various employments, was earning approximately \$20,000 per year.

Workman moved to Colorado as a result of his efforts to purchase a radio station. His initial contact with regard to a possible purchase in the Denver area was with John Stebbins, a broadcast properties broker. Workman, through Stebbins, became interested in an AM station⁽¹⁾ owned by Radio Denver Corp. (RADIO DENVER). The owner of Radio Denver was Bruce Lien. Workman met with Lien several times beginning in 1980, and by September, 1981, he had agreed to purchase the station. As earnest money, he delivered a check for \$30,000 which was placed in an escrow account. The original agreement for the transfer of the station was dated September 10, 1981; it was amended the first time on June 21, 1982.

After Workman's and Lien's execution of the buy-sell agreement, application was made to the Federal Communications Commission (FCC) for approval of the transfer of the station's license from Radio Denver to Golden Bear Communications, Inc., (GOLDEN BEAR) an entity incorporated by Workman to own and operate the radio station. The FCC approved the transfer of license from Radio Denver to Golden Bear in July, 1982. Once the assignment of the license had been approved, the parties had approximately 60 days under FCC rules and regulations to close the sale of the station assets.

The original purchase agreement required Golden Bear to make a \$210,000 cash payment at closing. Workman, however, had difficulty in raising that amount. He at last arranged for the cash which would become necessary to close by obtaining a loan from Guaranty Bank in Denver. Guaranty, however, would not loan money to Workman without security located within Colorado. Workman was able to obtain a \$175,000 letter of credit to Guaranty from Wells Fargo Bank in San Francisco. Workman's obligations to Wells Fargo under the letter of credit were secured by mortgages on some or all of the California properties. The mortgage or mortgages taken by Wells Fargo, however, were not first mortgages but were junior to liens already against the properties. Depending on the property, the position of Wells Fargo was second or third.

It was not until August 11, 1982 that discussions arose with regard to reducing the cash down payment. Lien testified this put pressure on him because of the FCC requirement that it approve any transfer. Lien felt that he had already lost time on the application process and wanted to close this transaction rather than seek a new buyer and go through a new application process with the FCC. Lien was distressed about the reduction, but he was eager to close, so he approved it.

Thus, in what was described as the "eleventh hour", Lien agreed with Workman to a reduction of the cash necessary to close the transaction. This agreement was reduced to writing as the "Second Amendment to Agreement" and was executed August 18, 1982. The cash down payment was reduced from \$210,000 to \$120,000. The \$90,000 difference was to be represented by a promissory note. This note was executed on or about September 1, 1982, and was payable over four years. Golden Bear and Workman executed another promissory note for the other \$550,000 of the purchase price. In the second amendment, Workman and Radio Denver agreed that in the event of a default and a demand by the payee, the makers would make, execute, acknowledge and deliver to the holder mortgages, deeds of trust, security agreements or pledges on certain properties. The note then listed the properties

as follows along with Workman's present estimate of his equity in them:

<u>Property, Address and Description</u>	<u>"Presently Estimated Equity of Workman"</u>
(1) 1119 - 4th Ave., Rock Island, IL (19 units)	\$350,000.00
(2) 3305 South A, Oxnard, CA (4 units)	175,000.00
(3) 8597 N. Ventura Ave., Ventura, CA (commercial building)	250,000.00
(4) 8625 N. Ventura Ave., Ventura, CA (parking lot)	125,000.00
(5) 208 Delaware, Ventura, CA (single family residence)	125,000.00
(6) Moonie M. E. airplane	50,000.00

As part of the \$90,000 note's Schedule A which stated additional terms, Workman and Golden Bear agreed that they would "furnish the holder [of the note] by the 20th day of each month with full and accurate written statements of Profit and Loss and Balance Sheet reflecting and covering operations of said Radio Station KJJZ for the preceding month, and makers further agree to keep true and complete books of account records of operation at the principal office of radio station KJJZ and that the holder hereof and holder's agents, accountants and attorney shall have the right of access to and examination thereof of the said station's offices during the hours of 9:00 a.m. through 4:00 p.m. on all business days." None were ever furnished.

During the course of the transaction, Radio Denver, through Lien, obtained a "personal financial statement" for Dennis Workman dated March 21, 1981 (plaintiff's Exhibit 2). Lien testified that he, for Radio Denver, relied upon the statement in agreeing to the sale. Workman at trial did not recall sending this financial statement to Lien or to Radio Denver and he did not recall authorizing its delivery. Workman recalled that the document was prepared by persons working on his behalf, but did not recall the origins of certain of the figures including the valuation of fixed assets. Workman did testify that it is possible that he could have given it to Lien but does not recall doing so. Workman further testified that the consulting company which helped to or did prepare the document could have been authorized by him to deliver it to Lien but he was not sure. Because this financial statement is central to the plaintiff's section 523(a)(2)(B) complaint, it is reproduced in full as Appendix No. 1 of this Memorandum.

Lien does not recall how he received the March financial statement, whether in the mail or through personal delivery or whether from Workman, or Workman's agents.

Lien testified that he called the CPA who reportedly had prepared the financial statement and asked questions and also checked on Workman's parents who originally were to co-sign the obligation under the purchase agreement. (Lien said Workman later told him he could not get them to sign.) Lien testified he also relied on the broker who was supposed to screen potential buyers.

Lien said that he inquired of the CPA as to whether the values on the financial statement appeared reasonable and was told that they did. Lien was told by the CPA that Workman's financial statement was not audited. Lien also contacted a credit bureau in Rapid City to do an investigation with regard to Workman and although the investigation did not purport to verify the financial statement, it did indicate that the credit bureau found no "big problems" on Workman.

Workman's assets were offered to secure the \$90,000 short-term note. Lien further testified he would not have agreed to the second promissory note in the amount of \$90,000 but for the added security.

With regard to the California properties offered as security, Workman told Lien that the equity values of those properties were conservative and that they were located in good areas for real estate. He further told Lien that he thought they could be easily sold and if sold, could pay off the note.

The California properties were apparently foreclosed on. There was little evidence as to these foreclosures. There is no dispute, however, that that is what happened to them.

Lien testified that had it not been for the information as shown on Workman's financial statement, he would not have agreed to sell Golden Bear the station assets.

Neither Lien nor Radio Denver took a security interest in any of the California properties. Radio Denver made no independent effort to ascertain the values of the properties as shown on the financial statement other than to talk to Workman or his agents. Lien testified he felt comfortable enough with regard to the financial statement and put faith in the figures Workman had reported based on his discussion with the CPA and the credit bureau.

On cross-examination, Lien was asked what evidence he had that on March 21, 1981 the equities in the California and Iowa properties were not as stated. He answered he had none.

Prior to FCC approval of the license transfer, Workman was employed by Radio Denver as a salesman. He did not exert any management control, however. After the closing in August, 1982, Workman took control of the station and immediately attempted to cut the station's overhead costs. He fired some employees; others quit. He began phasing out the existing studio location, eventually moving it into a mobile home at the transmitter site. He believes that that move took place in late 1982 and enabled him to reduce expenses. He remained at the transmitter site until approximately September of 1984 when he moved the entire station operation to a property in Edgewater, Colorado. It was described at trial as the "Edgewater property," the "Shoals Lake property," or the "KIMN property." It was purchased by Workman personally from Jefferson-Pilot Broadcasting Co. in August, 1984.

It was necessary for Workman to obtain a new business location for KPPL because by September, 1984, he and Golden Bear were in default in their promissory obligations to Radio Denver. Golden Bear was in default also under its lease of the transmitter site which Radio Denver had leased but not sold to Golden Bear. Radio Denver repossessed the transmitter site through a forcible entry and detainer action in April, 1985.

It was after the court order in the forcible entry action that an event occurred which is the basis of plaintiff's allegations under § 523(a)(6). Workman returned to the transmitter site, entered the transmitter building, and removed two crystals manufactured for use at 1390 KH. There is a dispute in the testimony as to whether it was necessary for Workman to break into the transmitter building to obtain the crystals, which were property of KPPL/Golden Bear. Paul Pettit, a first-class radio engineer, testified that Workman had told him, in May of 1985, that he had broken into the transmitter site to obtain the crystals. Workman on the other hand testified that the door was unlocked and he was able to enter without breaking in. Radio Denver had changed both the door and the locks to the transmitter site following the forcible entry action. Workman testified that he had gone back to for the crystals on the advice of his Colorado corporate attorney Dan Woodrow.

Subsequent to his obtaining these two crystals from the transmitter site, Workman apparently acquired two others, a crystal for a 1320 KH which he obtained from a private seller, and a crystal for 1390 KH which he purchased at a ham show in Denver.

Workman used two crystals in a used transmitter to return KPPL to the air from the Edgewater location. Apparently, however, the station was not on the air long as it "went dark" or off the air at the end of May, 1985.

In late December, 1984, Golden Bear acquired the stock of Southwest Broadcasters, a corporation which owned two radio stations in Oregon. The purchase price was \$620,000. There was no down payment; the seller took back a note for the entire purchase price.

In March of 1985, while in financial difficulty with KPPL, Golden Bear acquired radio station WBTY in Homerville, Georgia. The station was purchased from Southern Broadcasting and Investment Co., Inc. (SOUTHERN), which was owned by Berrien Sutton.

Golden Bear purchased the Homerville station for \$165,000 including \$5,000 as a down payment. Sutton had wanted a higher down payment. Workman could not come up with it so Sutton, although reluctantly, agreed to \$5,000. The remaining balance was represented by a promissory note requiring monthly payments and which was secured by the station's equipment and accounts receivable. Golden Bear also agreed to assume seller's \$20,000 debt to a local bank. Golden Bear soon defaulted on its obligation to seller, only one monthly payment having been made.

Southern filed an action in June, 1985 in the Superior Court of Clinch County, Georgia. In that action, at the outset of the suit, it obtained the appointment of a receiver to take charge of the pledged assets. Workman controlled the operations of WBTY in Homerville from March 16, 1985 through June of 1985 when the state court receiver was appointed.

Golden Bear filed its voluntary Chapter 11 bankruptcy petition in Colorado on July 31, 1985.

On October 9, 1985, the Bankruptcy Court in Colorado, the Hon. Roland J. Brumbaugh presiding, entered an order converting the case to a Chapter 7 case. The order included the following:

"6. Case No. 85 B 04313 J is hereby converted, effective immediately, from a proceeding under Chapter 11 to Chapter 7 of the Bankruptcy Code. Accordingly all principals, agents and other representatives of Debtor are hereby prohibited from dealing with any of Golden Bear's assets or in any other way acting in a manner prejudicial to the interests of Debtor." (Emphasis added.)

In paragraph 7 of that Order, pursuant to 18 U.S.C. § 3057, the Court referred the case to the United States Attorney for investigation.

Following the conversion to chapter 7, the appointed trustee, Linda L. Siderius and her counsel Tom Brown, in October, 1985, visited the Georgia site and determined not to resist the continuation of the state court receivership. Southern had filed a motion for the Bankruptcy Court to abstain from jurisdiction over the WBTY assets and to allow the receivership to proceed. The court did so. The trustee later abandoned the property in Georgia to Southern.

Siderius and Brown went to Oregon in late October to inspect the stations owned by Southwestern in that state. The trustee made the decision to operate the Oregon stations and to put them up for sale. Eventually, the trustee sold the two stations.

After Siderius was appointed, KPPL continued to remain off the air, but by December of 1986, no buyer for the station's assets had been found and the trustee began her efforts to renew broadcasting. A broadcast engineer was able to get the station on the air but the broadcast quality was poor.

From Brown's investigation into Golden Bear's operations, it was his opinion that no organized financial documents were kept, that although original source documents existed, they were not organized and basically were an accumulation of papers.

According to Christopher Clark, one of Golden Bear's attorneys, Workman brought records to court in Colorado on October 7, 1985 for the hearing on the motion to convert the case. As he recalls, they left without any records and recalls that records had been introduced into evidence at court. Brown recalls that written leases were produced at that time.

On inspecting the station sites in Denver, the trustee did not find any records of KPPL/Golden Bear operation although there was a belief by the trustee's attorney and intimation by Workman that some of these records were stored in a trailer. Brown said that he and the trustee found no Golden Bear business records in Georgia, but that Golden Bear had only operated the station for a limited period. In Oregon, Brown and Siderius could not find any financial statements for Golden Bear's operation. They did locate large stacks of bank statements, invoices, checks and other papers packed in boxes.

In July of 1986, Workman visited the Edgewater site of KPPL and testified that he had found that a substantial amount of property had been removed. Based on what he knew, he believed that the building was to be condemned in the following month. He said he did not want any more property to be taken so he removed the remaining personal property, the majority of which he testified belonged to him and some of which belonged to Radio Denver. The property was stored in two semi-trailers owned by Arvada Trucking and Storage Co. (ARVADA). The trucks were 35 to 40 feet long; one was fairly full and the other approximately half full. Workman testified that it was obvious to him the trustee was not going to do anything about the situation so he decided to protect the property. He also testified his attorney told him he thought it had been abandoned.

Arvada contacted the trustee's attorney requesting that he take a look at the semi-trailers and their contents. The trucking company wanted not only the use of the trailers but also to get paid. Approximately \$4,000 was owed for transportation and storage. The trustee decided not to pay these storage fees.

In December, 1986, Workman placed an ad in Broadcasters I.D. magazine for the sale of two AM transmitter crystals, one at 1320 KHz and one at 1390 KHz. He also placed an ad in the same magazine for the sale of a Collins 5000-watt FM transmitter. Both ads requested replies to Workman in Stockton, Iowa. Workman testified at trial that the crystals which were advertised for sale were two which he obtained while in Colorado but were not the crystals taken from the KPPL transmitter site. Those were left by him at the Edgewater property. He was unsure whether they were at the time of trial lost or stored in the Arvada trailers.

Siderius, through her attorney, filed a motion for an order to take the Bankr. R. 2004 examination of Workman. The order was served on Workman both by mail and by the sheriff in the county where Workman resided in Iowa. The examination was scheduled for January 27, 1986.

Workman did not want to go to Colorado. His attorney, Clark, advised Workman to hire someone to represent him or write to the trustee or Brown.

Workman hired attorney Arthur Lindquist-Kleissler, who by letter of January 22, 1987, advised Workman of his opinion with regard to the flawed nature of the order for the 2004 examination, and further about Workman's options relating to it.

Lindquist-Kleissler, on January 26, 1987, filed a motion to vacate or quash the order or alternatively to continue the exam.

He objected to the examination on the basis of improper service, failure to tender proper mileage fees, and further argued that Workman had been given inadequate time to respond in that Workman was not served with the notice of examination until January 21, 1987.

Workman did not appear for the exam, so the trustee's attorney applied for an "order of apprehension" under Bankr. R. 2005. Such an order was entered by the court.

Workman appeared voluntarily for a rescheduled examination on February 25, 1987 in Denver. He was represented at that examination by Lindquist-Kleissler.

Workman did not inform the attorney for the Golden Bear bankruptcy trustee that he was himself in a Chapter 7 bankruptcy in Iowa. Workman testified that he had been advised by counsel to tell the truth but if he were not asked he did not need to volunteer that information. According to Workman, this advice was given to him by both Ray Terpstra, his Iowa bankruptcy counsel, and by Lindquist-Kleissler.

On February 26, Workman, without counsel, worked out a "stipulation" with the trustee's attorney, Tom Brown. This stipulation which was later approved by the bankruptcy court in Colorado is set out in full as follows:

COMES NOW the Trustee for this bankruptcy estate, Linda L. Siderius, by and through her counsel, Zimmerman & Schwartz, P.C., and Mr. Dennis D. Workman (a/k/a Denny Workman) and stipulate to the following:

1. Mr. Workman agrees to withdraw all his objections to each and all of the matters now pending in this bankruptcy case which are before the Court, including the following:

- a. The Trustee's Motion to Sell Assets of the Estate (Radio Stations KSHR and KBEY);
- b. The Trustee's Motion to Abandon Property of the Estate (Radio Station WBTY);
- c. The Trustee's Motion for Approval of Management Agreement, etc., with regard to radio station KPPL;
- d. Application of Zimmerman & Schwartz, P.C., for interim attorneys' fees.

2. Additionally, Mr. Workman agrees to file no further objections or requests for hearing and to not oppose in any manner any further actions, except as provided in paragraph 3 below, the Trustee may propose to this Court with regard to this bankruptcy estate and this stipulation shall be construed as a waiver of any and all right or claim Mr. Workman may have to file such objections, oppositions, or requests for hearing.

3. Mr. Workman has filed with the Court, four Proofs of Claim and acknowledges that the Trustee will object to each such Proof of Claim seeking complete disallowance of them. Mr. Workman reserves the right to resist such disallowance of these Proofs of Claim.
4. Additionally, Mr. Workman agrees to execute all appropriate documents necessary to accomplish withdrawal of all his pending opposition before the Federal Communications Commission to matters affecting the assets of this bankruptcy estate, including the transfer of licenses related to operation of radio stations KSHR and KBEY, WBTY, and KPPL. Mr. Workman agrees to not file or submit to the FCC any further such opposition in manner or form whatsoever.
5. Finally, Mr. Workman agrees to release and relinquish all claims of ownership or other interest in properties, real or personal, which may be located at the physical sites of radio stations KSHR-KBEY in Oregon, KPPL in Colorado, and WBTY in Georgia. By this stipulation, Mr. Workman hereby acknowledges that any and all such claims are hereby released and forever waived.
6. The Trustee agrees to allow Mr. Workman to retain or take possession of all properties not located at the three radio station sites described in paragraph 5 above and further agrees that Mr. Workman may take possession of a certain 1970 Ford Van located in Oregon.
7. The Trustee agrees to dismiss with prejudice the Complaint for Turnover against Mr. Workman presently pending before this Court and agrees to dismiss the motion for prejudgment attachment order and preliminary injunction now pending before this Court.
8. Lastly, the Trustee, upon acceptance of this Stipulation by Mr. Workman and the Court, recommends to this Court and to the United States Trustee's Office and to the U. S. Attorney that no prosecutions or referrals for prosecution be undertaken against Mr. Workman for any of his past actions with respect to this estate.

Contrary to Workman's testimony, Workman's bankruptcy counsel in Iowa, Ray Terpstra, did not advise Workman that he could execute a stipulation with the Golden Bear trustee in Colorado.

Workman personally filed a Chapter 11 bankruptcy case in 1983 but it was dismissed after several weeks. He filed personal bankruptcy under Chapter 11 in Illinois in 1984 and that case was also dismissed.

Radio Denver Corp. brought a civil action against Workman and Golden Bear in the State of Colorado in District Court for the County of Arapahoe in 1983. Because of the bankruptcy case of Golden Bear, Radio Denver proceeded in its case against Workman and on March 15, 1986 the court granted a judgment in favor of Radio Denver against Dennis Workman in the sum of \$1,174,744.66 plus court costs.

The district court's judgment included the following on page 2:

* * * The closing was on September 1, 1982.

At the closing Defendants executed and delivered a promissory note in the amount of \$550,000.00 and an additional note in the amount of \$90,000.00. Each note required quarterly payments of principal and interest beginning June 1, 1983. It is admitted that nothing has been

paid under either note. Defendants were in default on the notes from June 1, 1983. The property pledged as additional security was foreclosed or lost and had no value for Plaintiff.

I.

Radio Denver raises three issues on dischargeability under 11 U.S.C. § 523 and contends that any of nine actions of the debtor warrant an order of this court denying his discharge.

Plaintiff concedes that its burden on all grounds is by clear and convincing evidence, but argues it has met this burden on all issues.

II.

Fraud -- 11 U.S.C. § 523(a)(2)(A)

Radio Denver argues that in August, 1982, when the sale of radio station KPPL was closed and Workman executed the promissory notes to Radio Denver, he knew that he and Golden Bear could not pay the promissory notes and did not intend to. Plaintiff argues that this was fraud. Plaintiff has not met its burden of proof on this issue. The evidence is insufficient to show that at the time of closing in August, Workman did not intend to pay the promissory notes. It is true that he did not pay and it is arguable under the evidence that the station under his authority and management did poorly. Plaintiff has certainly proven to this court that while Workman was a consummate artist in obtaining low down payment financing for nearly anything he wanted to buy, he was also unable to make successful ventures out of any of his purchases. While he had little difficulty in negotiating purchases, there is no evidence that he operated any of the stations at a profit or paid with any regularity any of the bills arising from their operations or from their purchases. He was no doubt a poor businessman.

However, this court does not believe the evidence is clear and convincing that at the time of the purchase from Radio Denver he did not intend to pay.

III.

Fraudulent Financial Statement Under 11 U.S.C. § 523(a)(2)(B)

Plaintiff contends that the financial statement published by Dennis Workman dated March 21, 1981 was materially false, was given to Radio Denver with knowledge of its falsity and with intent to deceive, and that it was reasonably relied on by Radio Denver to its detriment. In short, Radio Denver contends that the financial statement was fraudulent.

Specifically, Radio Denver says that the fixed asset values were intentionally grossly overinflated by Workman as was the equity in the fixed assets.

Plaintiff has not shown this court by the requisite quantum of proof that it either reasonably relied on the March 21, 1981 financial statement or that the values of the fixed assets or of Workman's equity in them were grossly overinflated.

Although the evidence is somewhat in dispute, the court believes that Workman published the March 21, 1981 financial statement to Radio Denver for the purpose of obtaining credit from the vendor in the purchase of the station assets.

On the financial statement under fixed assets, Workman listed seven properties: a single-family residence, a condominium, two four-unit apartment houses, a 15-unit apartment house, a commercial building, and a parking lot near the commercial building. The financial statement also shows long

term liability against each of these fixed assets. Fixed assets were claimed by Workman to have a total value of \$1,777,500, encumbrances of \$829,500 and an aggregate equity of \$948,000.

Plaintiff has not shown that these values were materially false at the time the statement was made. Lien discussed the financial statement with Workman's accountant but apparently obtained no appraisals, either independently or from Workman. This transaction for the sale of the station did not close on March 21, 1985; it did not close until August of 1982 at which time a second amendment to the agreement and Schedule A to a promissory note dated September 1, 1982 listed Workman's more recent estimates of equity in five of the seven properties.

By comparing the March financial statement to the later agreement and schedule, one can see that the estimated equities in the five pieces of real property had all increased substantially.

The residence had increased in equity from \$76,000, as shown on the financial statement, to the estimate of \$125,000. The condominium was not shown on the later documents. One of the four-unit apartments was shown on the later documents and had risen to \$175,000 in estimated equity either from \$165,000 or \$110,000. The 15-unit apartment increased in equity from \$269,000 to \$350,000 and the equity in the lot and commercial building in Ventura increased from \$262,000 to \$375,000. During the time period from March 21, 1981 to August of 1982, Workman indicated to Radio Denver that the equity in these and at least five of the properties had increased by at least \$271,000.

In addition to failing to require appraisals, Radio Denver did not question the failure of Workman on the later documents to show the equity in the condominium or one four-unit apartment house.

This was a large commercial transaction. Yet the financial statement upon which Radio Denver claims to have reasonably relied was not the type of financial statement which identifies its preparer, or the type of assurances the preparer was willing to give to those reading the financial statement. Lien knew it was unaudited. At best it is an unaudited compilation of information supplied presumably by Workman in a financial statement format. It is not difficult to understand why Radio Denver relied on it, however. Radio Denver was all too eager to sell this radio station to Dennis Workman. This court does not believe that the plaintiff reasonably relied on a financial statement which showed nearly \$1,000,000 in real estate equity when all the while Lien knew the owner was having difficulty in financing a \$210,000 down payment. This court questions whether there was reliance, much less reasonable reliance.

There is said to be no reliance on a financial statement when any one of three following situations exists:

- (1) If the creditor knows the information presented is inaccurate;
- (2) When the information on the financial statement is insufficient to portray a realistic financial picture; or
- (3) When a creditor's separate investigations suggest the financial statement is false or incomplete.

In re Bonefas, 41 B.R. 74, 79 (Bankr. N.D. Iowa 1984).

The court believes that the plaintiff's knowledge of the debtor's difficulty in arranging financing despite the allegedly large increases in Workman's equity in five of the properties over a short period of time, should have sufficiently alerted the plaintiff that the financial statement was potentially

inaccurate or puffed up. Again, given the size of this financial transaction and the style of the financial statement, the court cannot find that the plaintiff reasonably relied upon it.

Further, it is plaintiff's burden to show that the financial statement was false with regard to either the value of the fixed assets or debtor's equity in them. It has shown neither. The fact that Workman may have lost these properties to foreclosure without the ability to refinance them does not establish by clear and convincing evidence that the equity values were never present. They may not have been, but the court believes that the evidence is insufficient to prove clearly and convincingly that they were not.

In the findings of fact, the court has set out the basic testimony regarding Workman's investments, improvements and encumbrances in his real estate holdings.

The court has compared the investments, in light of the financing arrangements, with the financial statement information on each property.

By March 21, 1981, Workman was claiming increases in the values of these properties above his original investment by amounts ranging from 40% to 178%.

In at least two cases (the 15-unit apartment house and the commercial building and lot), the equity had risen to an amount greater than the original investment.

The figures are remarkable, but there is insufficient information before this court to find that they were false.

IV.

11 U.S.C. § 523(a)(6) -- Larceny/Malicious Injury

The third issue raised under § 523 is plaintiff's argument that Workman, following Radio Denver's obtaining legal possession of the transmitter site, broke in and stole two crystals from the transmitter equipment.

Title 11, § 523(a)(6) permits the court to deny discharge of a particular debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."

Plaintiff argues that the evidence is clear and convincing that Workman stole two crystals that belonged to the plaintiff.

No document entered into evidence, however, proves an ownership or security interest of the plaintiff in the crystals. The evidence clearly was oral that plaintiff obtained possession of the transmitter site through a forcible entry and detainer action in Colorado. This court is apparently asked to jump from that forcible entry and detainer action (which the court presumes in Colorado, much the same as in Iowa, is to obtain possession of realty) to the "ownership" of the crystals by plaintiff. There is insufficient evidence to show that the plaintiff owned these crystals.

While the forcible entry and detainer action may have given plaintiff some property interest in the crystals which might be maliciously converted under 11 U.S.C. § 523(a)(6), plaintiff has failed to prove either the property interest or how it arose.

The court, therefore, finds that the plaintiff has failed to meet its burden of proof under 11 U.S.C. § 523(a)(6) so as to exempt the value of the crystals from discharge under that Code section.

V.

Objections to Discharge

Plaintiff has raised nine separate grounds upon which it contends discharge of the debtor should be denied. The court has considered the evidence and the arguments of the parties and concludes that the plaintiff has failed to meet its burden of proof on all issues save one.

VI.

Fraudulent Conveyance -- 11 U.S.C. § 727(a)(2)(B)

Plaintiff contends that Workman should be denied discharge because with intent to hinder, delay or defraud creditors or the trustee in his personal bankruptcy, he transferred property of the estate.

Plaintiff argues that Workman, having filed personal bankruptcy, settled his disputes with the Golden Bear trustee, thereby transferring property of his bankruptcy estate without authority and with an intent to hinder, delay or defraud his creditors.

Transfer is defined broadly under the Code as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property " 11 U.S.C. § 101(50).

In his Chapter 7 statement of affairs (part of Exhibit PP) in response to question 7, Workman discussed property of his held by another: "Golden Bear Communications, Inc. is in possession of unencumbered property to the best belief and information of the Debtor. Property identified as exhibit "B" attached hereto as Tools of the Trade. Exact location of the property is currently unknown."

In the exhibit provided to the court, however, exhibit "B" was not attached.

Siderius had given notice to all parties in interest in the Golden Bear case of her application to the bankruptcy court in Colorado for the sale of assets of the Oregon radio stations (exhibit H).

As part of exhibit H, there was admitted into evidence Workman's "OBJECTION TO SECOND MOTION FOR AUTHORITY TO SELL ASSETS OF THE ESTATE (RADIO STATION KSHR AND KVEY) AND REQUEST FOR HEARING."

The objection was signed by Workman personally and alleged, *inter alia*, that:

"5. Some of the Equipment located at the stations belongs to Denny Workman, personally."

Siderius also had filed a notice of her application to abandon to Southern Broadcasting tangible assets related to station WBTY in Homerville. In exchange for the abandonment, Southern was to pay the Golden Bear estate \$2,599.22.

Also admitted into evidence was Workman's personal objection to that abandonment which included the following statement: "Creditor [Workman] believes that Trustee is also abandoning equipment in this action that belongs to Denny Workman, personally."

As part of the stipulation dated February 25, 1987, Workman agreed to withdraw his objections to these two transactions so the trustee could proceed.

Among other things, he received in exchange the trustee's agreement to recommend to the court and to the U. S. Trustee and U. S. Attorney that "no prosecutions or referrals for prosecutions be undertaken against Mr. Workman for any of his past actions with respect to this estate." (Plaintiff's exhibit 27.)

The evidence shows that the abandonment to Southern was consummated as were the sales of the Oregon stations.

Also as part of the stipulation, Workman agreed to release and relinquish all claims of ownership or other interest in properties real or personal located at the sites of the radio stations in Oregon, Georgia and Colorado.

The court concludes that Workman's execution of the stipulation of February 25, 1987 in the Golden Bear case was a transfer within the meaning of 11 U.S.C. § 727(a)(2). It was a transfer of property of the Workman bankruptcy estate which was made after the filing of his personal bankruptcy petition within the meaning of 11 U.S.C. § 727(a)(2)(B).

The court must therefore decide in determining whether to deny discharge whether Workman's transfer was with intent to hinder, delay or defraud the Iowa trustee or Workman's creditors.

The intent to hinder, delay or defraud must be actual not merely constructive. Devers v. Bank of Sheraton Montana (In re Devers), 759 F.2d 751, 753 (9th Cir. 1985).

This intent may be shown through circumstantial evidence. FDIC v. Morris (In re Morris), 51 B.R. 462, 464 (Bankr. E.D. Tenn. 1985).

Reckless indifference to the truth which equates to fraud may be grounds for denial of charge. Comprehensive Accounting Corp. v. Morgan (In re Cycle Accounting Services), 43 B.R. 264, 273 (Bankr. E.D. Tenn. 1984).

The evidence in this case, even when looked at in a light most favorable to the debtor from the standpoint of his intent, shows that he was aware that his personal bankruptcy created an estate in the trustee. He previously testified that the property moved from the Edgewater property to the trailers he thought was "abandoned" by the trustee. In the Golden Bear case, he had been personally prohibited by the court from dealing with any of Golden Bear's assets. The court has examined Workman's objections to the sales and concludes that he was sufficiently knowledgeable to understand that in executing the stipulation he was dealing with property which was the property of the bankruptcy trustee in his personal chapter 7.

It is further evident, that he attached significance to disclosing to the Golden Bear trustee or to the bankruptcy judge in Colorado, his personal bankruptcy in Iowa. He had determined, with the advice of counsel, only to disclose that information to avoid an outright lie.

This court can only infer that had he disclosed the bankruptcy information, he was aware that his settlement would be jeopardized. No one asked so he did not volunteer that he had filed bankruptcy. The settlement apparently was therefore approved, and the assets which he personally claimed were transferred. For this, Workman received consideration, not the least of which was the agreement of the Golden Bear trustee to recommend no prosecution of Workman for bankruptcy crimes.

Workman defended his execution of the stipulation, testifying that he was advised by his counsel in Iowa, Ray Terpstra, that he could enter into a settlement with the trustee. His testimony was as follows:

Question [by defendant's counsel]: "[P]rior to going out to this hearing did you talk to Mr. Terpstra?"

Answer: "Yes."

Question: "And what did he [Mr. Terpstra] advise you regarding signing a stipulation or anything else relating to the 2004 exam?"

Answer: "He advised me that it was okay to do that, that if they asked me if I filed a bankruptcy that I should tell the truth, to tell them I did. If they didn't ask it, not to volunteer it."

Workman was not asked about personal bankruptcy either at the examination or by the court the following day when he appeared before it on the stipulation. Terpstra testified that he had not given this advice. The court finds Terpstra to be more credible and has found, therefore, that no such advice was given.

This effort by Workman to convince the court that his action was on advice of counsel is added evidence that Workman knew his action was unauthorized--that he had a wrongful intent within the meaning of § 727(a)(2)(B).

Workman may no doubt argue that there is an absence of evidence that he intended by the stipulation to harm to his personal bankruptcy estate.

The sum of the evidence in this case, however, indicates that Workman is a self-centered person whose only concern was his own ability to "wheel and deal" without a care about the harm to others which may result from it.

This court concludes that Workman entered into the settlement with a reckless and total disregard as to the effect it might have in hindering or delaying his personal creditors or the Iowa trustee. He knew the property belonged to his estate, but he transferred it anyway.

This court, therefore, concludes that Workman's transfer effectuated through the stipulation of settlement approved in the Golden Bear case, was a transfer by Workman after the filing of his personal bankruptcy which he made with intent to hinder, delay or defraud his creditors or the Iowa bankruptcy trustee.

CONCLUSIONS OF LAW

The court concludes that Workman's discharge should be denied pursuant to 11 U.S.C. § 727(a)(2)(B). The remaining claims of Radio Denver should be dismissed.

ORDER

Judgment shall enter that the discharge of Dennis Workman is denied pursuant to 11 U.S.C. § 727(a)(2)(B), and the remaining claims of Radio Denver are dismissed.

SO ORDERED THIS 7th DAY OF MARCH, 1989.

William L. Edmonds
Chief Bankruptcy Judge

1. During the course of relevant events, the station's call letters were changed twice. For purposes of this memorandum, the most recent, KPPL, will be used.