

In the United States Bankruptcy Court
for the Northern District of Iowa
Western Division

BETTY A. NEISIUS
Debtor.

Bankruptcy No. 93-51657XS
Chapter 7

**ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTIONS; TRUSTEE'S
APPLICATION FOR PUBLIC SALE; TRUSTEE'S MOTION FOR DEBTOR
TO AMEND SCHEDULES; STATUS CONFERENCE**

Donald Molstad, the case trustee, has filed three motions--an objection to debtor's claim of exemption in a mobile home and various personal property; an application to hold a public sale in non-exempt property of the debtor; and a motion requesting the court's order requiring the debtor to amend her schedules. In conjunction with the hearings set on these matters, the court scheduled a status conference on the case, because the court desired to inquire of the debtor her interest in participating in contested matters and regarding her effort to be represented by counsel.

Hearing on the above matters was held on March 29, 1994, in Sioux City. Donald Molstad appeared as the trustee; the debtor, Betty A. Neisius, did not appear despite the fact that the court had served her notice of the hearing by certified mail.

Trustee's Objection to Exemptions

Trustee objects to debtor's claim of exemption in a mobile home and in personalty. As to the mobile home, trustee says that his objection is moot, as the mobile home is encumbered for more than his estimate of value, and the stay has been modified to permit the secured creditor to foreclose its interest. The court will not consider that objection further.

As to personalty, the trustee asserts that debtor claims more in value in personalty than Iowa Code § 627.6(5) permits. An appraisal attached to his objections shows value far in excess of \$2,000.00. But debtor does not claim all property on the list. It is difficult for the court to determine exactly what debtor claims as exempt, as debtor, in her schedule C, has not sufficiently described the items which she claims as exempt. This is trustee's concern, that the items on schedule C are overvalued, and the imprecise descriptions do not permit comparison of the list on the schedule to the appraisal. Moreover, trustee contends that debtor has not listed all her assets. This is borne out by a comparison of the appraisal with schedule B-4. Accordingly, the court will sustain the objection to the claim of exemptions in household goods and permit the debtor time to amend. Debtor's opportunity to amend slows the trustee's administration of the estate as the trustee cannot sell estate property without knowing what is claimed as exempt. It may be that nothing he holds will be claimed as exempt, but debtor needs to specify what she claims and in whose possession the claimed items rest.

Motion to Require Amendment by Debtor

Trustee asks that debtor be required to amend her schedules to show what of her property is held by other persons or entities or what property of other parties is being held by her. The latter information must be stated on the debtor's statement of affairs, in the response to question 14. Trustee believes debtor claims or may claim to hold others' property.

As to debtor's property held by others, such property should be listed in her schedule of personalty, and the schedule should show who physically possesses the property. The court will require amendment.

Application for Public Sale

Trustee applies to hold public sale of estate property. He desires to sell at public sale the property shown on the appraisal done by Dick Long. Trustee does not need permission to sell unencumbered property of the estate. He must give notice of the time and place of the sale. Fed.R.Bankr.P. 2002(c)(1) and 6004(a). He should await sale until the issue of exemptions is determined. When sale is appropriate, notice of sale may be reduced to 15 days including three days for mail allowance. Trustee shall include in his notice the deadline or time for objections and hearing date on any objections. Hearing date shall be obtained from the court.

ORDER

IT IS ORDERED that the trustee's objection to debtor's claims of exemption in household goods is sustained. Debtor shall have to and including April 15 to file amended claims of exemption in household goods, and during that time, sale by the trustee shall be stayed. If debtor fails to amend her claims of exemption in household goods, trustee's notice of sale may include all personalty which is property of the estate, including household goods. If debtor amends, she shall specifically describe items claimed as exempt. The debtor shall serve the trustee and the U. S. Trustee with the amended claims of exemption. The trustee's time to object to the claims of exemption shall be reduced to seven days. Hearing on any objections shall be April 26, 1994 at 10:30 A.M. in Sioux City.

IT IS FURTHER ORDERED that the trustee's motion to require amendment is granted. Debtor has to and including April 15, 1994 to amend her response to question 14 of her statement of financial affairs and her schedules of personalty. In her amended schedules of personal property, she shall list all property owned by her, whether in her possession or not. If property is not in her possession, she shall identify the person or entity who holds possession.

IT IS FURTHER ORDERED that trustee's motion to hold public sale is granted. He shall given notice of sale as prescribed in the Rules above cited. Notice of sale shall be reduced to 15 days including allowance for mailing. Trustee shall include in the notice the time for objections and the date for hearing on objections.

SO ORDERED ON THIS 29th DAY OF MARCH, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U. S. mail to: Debtor, Donald Molstad, Ruth Carter and U. S. Trustee.