

In the United States Bankruptcy Court

for the Northern District of Iowa

H & H DISTRIBUTING. CO. OF
CLEAR LAKE IOWA

Debtor(s).

Bankruptcy No. 95-40614XM

Chapter 7

ORDER RE: DEBTOR'S DEMAND FOR JURY TRIAL

The matter before the court is the debtor's demand for a jury trial on issues raised by the involuntary petition. Hearing on the demand was held by telephone on July 17, 1995. Richard H. Moeller, Esq. appeared for petitioner H & H Distributing Co., Inc. of West Union (H & H West Union). M. Wayne Oltrogge, Esq. appeared for debtor H & H Distributing Co., Inc. of Clear Lake (DEBTOR).

On April 7, 1995, H & H West Union filed its involuntary petition against the debtor, pursuant to 11 U.S.C. 303. It alleged that it was eligible to file the petition and that debtor is "generally not paying such debtor's debts as they become due." Debtor filed its answer on June 17, 1995, denying petitioner's eligibility to file and that it was so paying its debts. Debtor also responded that its debt to H & H West Union was in bona fide dispute. If the debt is the subject of a bona fide dispute, H & H West Union would not be an eligible petitioner. Nor would the claim be considered in determining whether debtor was generally paying its debts. Debtor demanded a jury trial on the filing eligibility of H & H West Union and on whether debtor was generally paying its bona fide debts as they became due. H & H West Union challenges debtor's right to a jury trial on these issues.

There is no Constitutional right to a jury trial under the Seventh Amendment on issues arising under 11 U.S.C. 303. In re McNaughton, 171 B.R. 65, 67 (Bankr. W.D. Mo. 1994). Congress has provided that "[t]he district court may order the issues arising under section 303 of title 11 to be tried without a jury." 28 U.S.C. 1411 (b). Such a determination has been referred to the bankruptcy court by the district court. See 28 U.S.C. 157(a); Order of Reference, United States District Court, Northern District of Iowa, May 5, 1986. Whether a jury trial will be granted on the issue of the involuntary petition is within the discretion of the bankruptcy court. In re McNaughton, 171 B.R. 65, 67 (Bankr. W.D. Mo. 1994). The court should consider whether the issues involve matters of law or credibility determinations. Id.

In this case, the claim of H & H West Union has been reduced to a judgment which has been appealed by debtor. The court determines that whether the claim is bona fide is a matter of law. Id. It is also appropriate for the bankruptcy court to determine whether the debtor is generally paying its debts as they become due. Id. Determination by the bankruptcy court will expedite these proceedings. The demand for a jury trial on the issues raised in the petition and answer is denied.

IT IS ORDERED that the debtor's demand for a jury trial on the issues raised by the involuntary petition and answer is denied. The clerk shall set a telephonic scheduling conference at the earliest possible date.

SO ORDERED THIS 14th DAY OF AUGUST 1995.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order by U.S. mail to: M. Wayne Oltrogge, Richard Moeller, Larry Eide and U.S. Trustee.