

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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NANCY ANN HANIKA

Bankruptcy No. 98-02209S

*Debtor(s).*

Chapter 7

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DONALD H. MOLSTAD Trustee

Adversary No. 99-9037S

*Plaintiff(s)*

vs.

NANCY ANN HANIKA DONNIE MEEVES

KEN TYLER and DUSTY McDOUGLE

d/b/a D & M Construction

*Defendant(s)*

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### **MEMORANDUM DECISION RE: COMPLAINT TO REVOKE DISCHARGE**

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Trustee Donald H. Molstad asks that the court revoke Nancy A. Hanika's discharge because he contends it was obtained by fraud. Trial was held on March 22, 2000 in Sioux City, Iowa. Donald H. Molstad appeared as his own attorney. Nancy A. Hanika appeared on her own behalf. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

#### **Findings of Fact**

Nancy A. Hanika filed her Chapter 7 bankruptcy petition on July 22, 1998. Earlier that month, Hanika settled a personal injury lawsuit that she had filed in state court. She received a \$25,000.00 settlement. Her lawyer in the case, Philip D. Furlong, withheld his attorney fees and paid Hanika net settlement proceeds of \$16,416.67. Hanika cashed Furlong's check at the Telco Triad Credit Union in Sioux City and took the cash home.

Furlong advised Hanika to file bankruptcy because he estimated that the settlement money would not be sufficient to pay in full all medical bills associated with her injuries. He told Hanika that he could not file the bankruptcy case for her because he was a friend of one of her medical creditors.

On the advice of a friend, Hanika went to see Lee Sturgeon for preparation of her bankruptcy papers. Hanika did not know Sturgeon. He is a disbarred Sioux City attorney. Hanika's two daughters, Gaylene Meeves who was in her late teens or perhaps 20 at the time, and Rea Hanika, a high school student, went with Hanika to Sturgeon's house. Hanika told Sturgeon that she wanted to file bankruptcy. Sturgeon took some information from her on her financial situation, including

information on her assets. She told him about her recent settlement and that she still had some money left from it.

Sturgeon asked Hanika to come back with more information about her debts. He advised her that he would file her bankruptcy petition in about 30 days and that she should spend all the settlement proceeds by then. She may have misunderstood him and believed that she needed to spend all the money within 30 days after filing bankruptcy, but before the meeting of creditors. At the time of her discussion with Sturgeon, Hanika had a lawsuit pending over the purchase of her home. She discussed this with Sturgeon because she wanted to be sure that the bankruptcy would not affect her home or the lawsuit.

Hanika testified that by the time she met with Sturgeon, she had spent quite a bit of settlement money. She told him she had bought a car and paid bills.

Hanika and her two daughters went back to Sturgeon to deliver unpaid bills and a copy of the contract for deed on her home. They stayed no more than a few minutes.

The three made at least one more trip to Sturgeon's house, the last time for the purpose of Hanika's signing the petition, Statement of Affairs, Statement of Intent, and schedules. Her daughter Rea went into the house with her. They stayed only a short time. Hanika did not read the documents. She asked to take copies home, but Sturgeon told her he needed them, but that he would give her copies of the documents at the meeting of creditors. He did so, but Hanika did not read them at the meeting and read them eventually only after Molstad filed this adversary proceeding. Molstad did not learn of the personal injury lawsuit until after the meeting of creditors when he was informed of the lawsuit and settlement by one of Hanika's creditors.

Hanika's Statement of Affairs, which was signed by Hanika under penalty of perjury, was materially false. The Statement of Affairs failed to disclose a repayment or repayments made within the previous 90 days on a \$1,500.00 debt owed to her son Donnie. The transfer or transfers should have been disclosed in response to question 3(b) of the Statement. The Statement failed also to disclose the personal injury lawsuit in response to question 4. The Statement failed also to disclose Hanika's payments to her boyfriend, Ken Tyler, to reimburse him for his payments to a contractor for repairs to her house. During the 90 days prior to filing, these payments to Tyler likely aggregated some \$2,700.00. Last, Hanika's schedules failed to disclose cash on hand at the time of filing. Although it is unclear exactly how much of the settlement money she still possessed on July 22, 1998, she did have at least \$280.00. No amount was disclosed. She spent most of the settlement money before she filed.

Molstad contends the Statement was materially false also because it failed to disclose payments to Dusty McDougal on account of debts incurred by Hanika for remodeling work done to her home. However, the trustee failed to prove by a preponderance of the evidence that the amounts of the repayments aggregated more than \$600.00 during the 90 days preceding Hanika's filing.

Also, evidence offered by Molstad appeared to be, at least in part, directed at Hanika's inability to account for her use of the settlement proceedings. However, failure to account for the loss of assets was not pled as a claim for relief and, therefore, no relief will be granted to the trustee on such a claim. Molstad's only claim for relief was the revocation of discharge on the grounds that the discharge was obtained through fraud by the debtor's false oath.

Hanika's discharge was granted on October 29, 1998. The trustee was not aware until after that date that Hanika's Statement of Affairs and property schedule were false.

### Conclusions of Law

The trustee asks that Hanika's discharge be revoked because it was obtained by fraud. 11 U.S.C. § 727 (d)(1). Such fraud may include making a false oath in a case. In the context of denial of discharge, in order to prove a false oath the plaintiff must show that (1) debtor made a statement under oath; (2) the statement was false; (3) the debtor knew the statement was false; (4) the debtor made the statement with fraudulent intent; and (5) the statement related materially to the debtor's bankruptcy case. First American Bank of New York v. Bodenstein (In re Bodenstein), 168 B.R. 23, 32 (Bankr. E.D. N.Y. 1994). In a revocation of discharge proceeding, the trustee must prove these elements by a preponderance of evidence.

Debtor's personal property schedule and her Statement of Affairs were signed under penalty of perjury, and thus they have the effect of statements signed under oath. Golden Star Tire, Inc. v. Smith (In re Smith), 161 B.R. 989, 992 (Bankr. E.D. Ark. 1993). Hanika's Statement of Affairs was false because she failed to disclose the existence of her personal injury lawsuit and the transfers of property to her son and to her boyfriend made within 90 days of filing her bankruptcy petition. Her personal property schedule was false because she failed to disclose cash on hand at the time of filing. The false statements were material to her case. The lawsuit was a significant asset in her financial affairs. Her actions in disposing of the settlement money were likewise significant events.

The major dispute in this proceeding is whether debtor knew her statements were false and whether she made the false statements intentionally. Hanika testified that she gave the information about the lawsuit and the transfers to Sturgeon, but that he omitted it, and she never read the bankruptcy documents after he prepared them. Indeed, she testified that she did not read her bankruptcy documents until after Molstad filed his complaint to seek revocation of her discharge. She testified also that she has only fourth grade reading ability, and that she was confused by the bankruptcy.

I believe debtor when she says she did not read the Statement of Affairs or schedules before they were filed. Nonetheless, I conclude that her discharge should be revoked.

Hanika had sufficient funds from her settlement to retain a licensed, experienced attorney to file her case. Instead, she hired a petition preparer, who, she had heard, charged reasonable prices. She did not know him. She spent the settlement proceeds not by paying her creditors, but by improving her lifestyle.

Hanika provided Sturgeon with the information, yet she never checked his use of it. I consider Hanika's conduct reckless. I do not excuse her conduct because of her explanation that Sturgeon did not give her copies of her documents when she signed them. She did not read them when he did. Moreover, that she may read only on a fourth grade level does not excuse her conduct. An examination of the Statement would have revealed no mention of the lawsuit and no mention of the transfers to Meeves and Tyler. The questions were not difficult. Question number 4 asks the debtor to "List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of the bankruptcy case." Question number 3 asks the debtor to "List all payments on loans, installment purchases or goods or services, and other debts, aggregating more than \$600 to any creditor, made within 90 days immediately preceding the commencement of this case." Hanika knew that Meeves and Tyler were creditors. She testified she paid them money she owed them, after she had received her settlement. By my observation of Hanika, I find she would have understood these questions had she read them. She would have known that her answers to these questions omitted relevant facts.

Hanika knew the importance of the schedules and that she was required to provide information to the court on the schedules and Statement. She understood that bankruptcy was a significant event. She disregarded her obligation to make full disclosure.

A reckless indifference to the truth is the equivalent of fraud for the purposes of deciding a case of false oath in bankruptcy. Boroff v. Tully (In re Tully), 818 F.2d 106, 112 (1<sup>st</sup> Cir. 1987); Packard Elevator Co. v. Wessels (In re Wessels), 79 B.R. 826, 829 (N.D. Iowa 1987); Guardian Industrial Products, Inc. v. Diodati (In re Diodati), 9 B.R. 804, 808 (Bankr. D. Mass. 1981). An intent to deceive has been inferred from reckless disregard for the truth in cases involving false financial statements. Insurance Co. of North America v. Cohn (In re Cohn), 54 F.3d 1108, 1118-19 (3<sup>rd</sup> Cir. 1995).

Hanika's reckless indifference to the truth of her bankruptcy documents leads me to find that Hanika was aware that her Statement and schedules were false and that she intended to deceive her creditors and the trustee. I conclude her discharge should be revoked. Accordingly,

IT IS ORDERED that judgment shall enter that the discharge of Nancy Ann Hanika is revoked, and her discharge is denied.

SO ORDERED THIS 31<sup>st</sup> DAY OF MARCH 2000.

William L. Edmonds  
U.S. Bankruptcy Judge