

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
WILLIAM YORK,) Bankruptcy Case No. 93-30992
)
 Debtor.)
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)
AGRIBANK, FCB, a federally)
chartered corporation, as)
successor to the Federal Land)
Bank of St. Louis,)
)
 Plaintiff,)
)
 vs.) Adversary No. 93-3070
)
WILLIAM YORK,)
)
 Defendant.)

OPINION

This matter having come before the Court for trial on a complaint objecting to discharge; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In the complaint before the Court, the Plaintiff, AgriBank, FCB, prays that the discharge of the Defendant/Debtor, William York, be denied pursuant to the provisions of 11 U.S.C. §§ 727(a)(2) and (4). In support of this prayer for relief, the Plaintiff alleges that the Defendant has transferred and/or concealed property of the bankruptcy estate with the intent to hinder, delay, or defraud his creditors

and, additionally, that the Defendant has made false oaths and statements in his bankruptcy schedules such that his discharge in bankruptcy should be denied.

A trial was held on this complaint on May 20, 1994, at which time the Court heard sworn testimony of the parties and received into evidence eight exhibits on behalf of the Plaintiff and four exhibits on behalf of the Defendant. The matter was taken under advisement by the Court, and, after further review of the testimony, exhibits, and legal authority cited by the parties, the Court now delivers its opinion of the case.

Pursuant to 11 U.S.C. § 727(a)(4)(A), the Plaintiff must prove by a preponderance of the evidence that the Defendant made false oaths or statements which the Defendant knew were false and that said oaths or statements were made willfully with the intent to defraud. Williamson v. Firemen's Fund Insurance Company, 828 F.2d 249 (4th Cir. 1987); In re Agnew, 818 F.2d 1284 (7th Cir. 1987). A false oath under 11 U.S.C. § 727(a)(4)(A) must relate to a material matter before it can affect a Debtor's discharge. See: Agnew, supra, at 1284, and In re Calisoff, 92 B.R. 346 (Bankr. N.D. Ill. 1988). Courts that have examined the question of what a "material" matter is have consistently held that the subject matter of a false oath is "material" and thus sufficient to bar discharge in bankruptcy if the matter bears a relationship to Debtor's business transactions or estate or concerns discovery of assets, business dealings, or existence and disposition of his property. In re Chalik, 748 F.2d 616 (11th Cir. 1984). It has also been held that a matter is

"material" for the purposes of § 727(a)(4) where it can be found that that matter or failure to disclose that matter hinders administration of the bankruptcy estate. See: In re Calisoff, supra, at 355. It has been further held that a Defendant may not escape denial of discharge for making false oaths by asserting that omitted or falsely stated information concerned a worthless business relationship or holding. In re Chalik, supra, at 618.

In the instant case, the Plaintiff has proven by a preponderance of the evidence that the Defendant/Debtor failed to disclose his position as president of a corporation in which the Debtor was at one time a major stockholder and incorporator. The evidence indicates that the corporation in question was incorporated in 1981 with the Defendant as the sole incorporator and that the Defendant was president of the corporation from the time of its inception until December 1993, some three months after the Debtor's bankruptcy filing. The Debtor's bankruptcy schedules disclose that the Debtor was employed by the corporation in question, but the schedules fail to disclose the fact that the Debtor was, in fact, the president of the corporation, a former owner of the corporation, and an individual who clearly exercised a wide latitude of control over the corporation and its assets. The Court finds that the Debtor's omission of his relationship with the corporation, York Enterprises, Inc., is a "material" matter in that this omission clearly bears a relationship to the Debtor's business transactions, assets, and the existence and disposition of his property. The Court further finds that, based upon the testimony of the witnesses, especially the testimony of the

Defendant himself, the Defendant knew that his failure to disclose his position as president of York Enterprises, Inc., was a falsehood and that that representation was made willfully with the intent to defraud in that it is apparent that the Defendant had every reason to attempt to shield his true relationship with York Enterprises, Inc., from his creditors. The Court also finds that this omission, in and of itself, is sufficient to deny the Defendant a discharge pursuant to 11 U.S.C. § 727(a)(4)(A); however, there were additional omissions on the Defendant's bankruptcy schedules which, although in and of themselves are not material enough to justify denial of discharge, when viewed collectively together with the Debtor's failure to adequately disclose his relationship with York Enterprises, Inc., clearly establish a pattern of reckless indifference to the truth by the Debtor. This reckless indifference to the truth by the Debtor serves as further indication that a fraudulent intent may be inferred from the conduct of the Debtor and the nature of the false oaths in Debtor's bankruptcy schedules. See: In re Bailey, 145 B.R. 919 (Bankr. N.D. Ill. 1992). The other omissions to which the Court addresses itself include the Debtor's failure to disclose a transfer of real estate to Rosetta Diveley on July 6, 1993, a mere two months prior to the Debtor's bankruptcy filing; a transfer of real estate to Agri/Land Corp. on February 2, 1993; and a transfer of real estate to Larry L. DeLuka and Barbara A. DeLuka shortly before the Debtor's bankruptcy filing. The Court also finds that the Defendant failed to adequately disclose his interest and relationship to a corporation known as National Timber

and Veneer, Inc., in that the Debtor failed to disclose that he was the sole shareholder of that corporation and that, at the time of his filing of bankruptcy, that corporation was shown as having assets in excess of \$80,000 as was evidenced by Plaintiff's Exhibit No. 6, a U. S. Corporate Income Tax Return, dated 10-26-93.

As a defense to the omissions and false statements shown by the Plaintiff, the Defendant contends that none of these omissions or false statements are material and that they were "things that just don't matter much." As the Court stated above, it does find that the omission of the Debtor's relationship with York Enterprises, Inc., is a material matter. The Court also finds that the Debtor's omission of his relationship with National Timber and Veneer, Inc., is a material matter, as is the fact that National Timber and Veneer, Inc., was a company purportedly having assets of over \$80,000, yet no such assets were scheduled by the Debtor. In fact, the Debtor valued his stock in that company as a nominal \$1. Either one of these omissions, in and of itself, would be sufficient to lead the Court to deny discharge pursuant to § 727(a)(4). However, when these two omissions are taken collectively with the other omissions and false statements which were shown by the Plaintiff, the Court has no difficulty in determining that the Plaintiff has proven its case by a preponderance of the evidence under § 727(a)(4)(A). The Defendant's conduct in preparing his bankruptcy schedules seems to indicate that the Defendant felt it appropriate that he should pick and choose what information his creditors would receive. In so doing, the Court finds that the Debtor simply was not honest and

forthright enough to be entitled to a discharge under Chapter 7 of the Bankruptcy Code. The Court further finds that the Defendant's machinations as to the business affairs of York Enterprises, Inc., both before and after his bankruptcy filing, do not tend to bolster his credibility in attempting to convince the Court that his omissions and false statements on his bankruptcy schedules were but mere oversights. In particular, the Court notes that both the Defendant's testimony and the testimony of his son, Thomas York, lacked credibility as it pertained to a particular special meeting of directors of York Enterprises, Inc., purportedly held on January 1, 1993. The Court also noted other discrepancies which lend support to the Court's finding that the Debtor has not been honest and forthright in filing his bankruptcy schedules and has continued that course of conduct before this Court.

Having found that the Defendant's discharge should be denied pursuant to the provisions of 11 U.S.C. § 727(a)(4)(A), the Court need not address the Plaintiff's allegations under 11 U.S.C. § 727(a)(2)(A) regarding transfers or concealment of estate property by the Debtor within one year of his petition for bankruptcy.

ENTERED: May 27, 1994.

/s/ GERALD D. FINES
United States Bankruptcy Judge