

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43675

Bradley & Sandra Nauer,

Debtor(s).

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**NOTICE OF HEARING AND OBJECTION TO  
CONFIRMATION OF CHAPTER 13 PLAN**

Michael Farrell, Chapter 13 trustee, by and through his undersigned attorney, hereby objects to confirmation of the Chapter 13 plan filed by Debtor.

1. The Court will hold a hearing on this motion at 10:00 a.m. on September 16, 2004, in Courtroom 8 West, United States Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.

2. Any response to this motion must be filed and delivered not later than 10:00 a.m. on September 15, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than September 13, 2004, which is three business days prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. Michael Farrell is the Chapter 13 trustee ("Trustee") of the Debtor in the above-referenced bankruptcy case. This case is pending before this Court.

4. This Court has jurisdiction over this matter under 28 U.S.C. Section 157 and 1334. This objection is brought pursuant to 11 U.S.C. §1324 and 1325, Bankruptcy Rule 3015 and Local Rule 3015. This matter is a core proceeding.

5. Debtors commenced this case by filing a voluntary Chapter 13 petition on July 1, 2004. Debtors filed a Chapter 13 plan on that date. The plan provides for monthly payments of \$75 for a period of 36 months resulting in a dividend to unsecured creditors of 5 percent.

6. Trustee objects on the basis that Debtors' plan does not appear to be feasible. Debtors Bradley has been injured in a car accident and has no income. Schedule I and J indicate that Debtors have no disposable income, and at least for the time being can not make the payments into the plan.

7. Trustee further objects that Debtors are not committing all of their projected disposable income to the plan. Debtors disclosed in their schedules that they have a workers compensation claim of \$100,000. Such a right to payment would be deemed disposable income.

**WHEREFORE**, Michael Farrell requests an order as follows:

- (A) Denying confirmation of the Chapter 13 plan; and
- (B) Granting any other relief the Court deems just and proper.

Hedback, Arendt & Carlson, PLLC

Dated: September 7, 2004

\_\_\_\_/e/ John A. Hedback\_\_\_\_  
John A. Hedback, #142438  
Attorney for Chapter 13 Trustee  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 436-3280  
Attorneys for the Movant

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43675

Bradley & Sandra Nauer,

**VERIFICATION**

The Trustee verifies under penalty of perjury that the information contained in the foregoing motion is true and correct to the best of the Trustee's knowledge, information and belief.

Dated 9-7-04



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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43675

Bradley & Sandra Nauer,

**MEMORANDUM**

Debtor(s). -

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Michael Farrell, Chapter 13 trustee, (Trustee) hereby submit its memorandum of fact and law in support of its Objection to Confirmation (Motion).

**I. STATEMENT OF FACTS**

The facts supporting the Objection to Confirmation are set forth in the attached verified motion. In addition, Trustee also relies on the representations made by Debtor in their verified Schedules on file and of record herein.

**II. STATEMENT OF LAW AND ARGUMENT**

Section 1324 provides that a party in interest may object to confirmation of a plan. A Chapter 13 trustee would be such a party in interest.

Section 1325 provides that the Court shall confirm a plan if it meets certain requirements.

Section 1325(a)(6) provides the Court shall confirm a plan if debtors are able to make the payments under that plan. It does not appear that debtors are able to do so in this case.

Section 1325(b)(1) provides that if an objection is filed by an unsecured creditor or the Chapter 13 trustee, the Debtor's plan must either pay unsecured creditors in full or provide for payment of all of Debtor's projected disposable income for the next three years. Disposable income is the amount of the income available after the payments reasonably necessary for the support of the Debtor and his dependents. Revenue received, or projected to be received, by a Debtor during a Chapter 13, even though exempt, should be included for determining disposable income. *In re Talley*, 240 B.R. 22 (Bankr. D. Neb. 1999). See also *In re Schnabel*, 153 B.R. 809 (Bankr. N.D. Ill. 1993). *In re Minor*, 177 BR 576 (Bankr. E.D. Tenn 1995) (specifically holding workers compensation awards must be included in disposable income test).

Hedback, Arendt & Carlson, PLLC

Dated: September 7, 2004

\_\_\_\_/e/ John A. Hedback\_\_\_\_  
John A. Hedback, #142438  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 436-3280  
Attorneys for Movant

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**UNSWORN DECLARATION FOR  
PROOF OF SERVICE**

Debtor(s).

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The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with office address of 2855 Anthony Lane, St. Anthony, MN 55418, declares that on the date below, I served the following:

1. Notice and Objection to Confirmation of Chapter 13 Plan;
2. Memorandum;
3. Proposed Order; and
4. Unsworn Declaration for Proof of Service.

upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Anthony, MN addressed to each of them as follows:

Office of United States Trustee  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

BRADLEY & SANDRA NAUER  
25789 18TH STREET WEST  
ZIMMERMAN, MN 55398

SHELDEN M VIE  
503 JACKSON AVE NW  
ELK RIVER, MN 55330

Ramsey Law Firm  
Attn Household Automotive Finance Dept  
Account 5000001414489  
PO Box 201347  
Arlington TX 76006

and I certify under penalty of perjury, that the foregoing is true and correct.

Dated: September 7, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-43675

Bradley & Sandra Nauer,

**ORDER DENYING  
CONFIRMATION OF  
CHAPTER 13 PLAN**

Debtor(s).

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This case came before the Court on the confirmation of Debtor's Chapter 13 plan. An objection to confirmation has been filed by Michael Farrell, Chapter 13 trustee. Appearances were noted on the record. Based on the file, record and proceedings herein,

**IT IS HEREBY ORDERED:** Confirmation of Debtor's Chapter 13 plan is hereby denied.

BY THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge