

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Fredrick Brad Kellogg,

Debtor.

Chapter 13 Bankruptcy

Bky No. 04-44148

**JOINDER OF STEPHEN KELLOGG IN CHAPTER 13 TRUSTEE'S
MOTION TO DISMISS**

INTRODUCTION

Stephen Kellogg joins in the Chapter 13 trustee's motion to dismiss Fredrick Brad Kellogg's ("Brad Kellogg's") case. In addition to the grounds for dismissal set forth in that motion, this Court should dismiss Brad Kellogg's Chapter 13 case because it was filed in bad faith. Since 1998, Brad Kellogg has filed four previous reorganization cases that were each dismissed. In this case, Brad Kellogg has unfairly manipulated the bankruptcy code by invoking the automatic stay to halt the Carver County District Court's issuance of an arrest warrant and imposition of fines for contempt. Moreover, Brad Kellogg's failure to appear at the meeting of creditors and the dismissal of each of his previous reorganization cases evidence his lack of intent to reorganize and make an honest attempt to repay his creditors. As a result, this Court should dismiss Brad Kellogg's Chapter 13 case and enter an order barring him from seeking protection under any chapter of the Bankruptcy Code for a period of three years.

BACKGROUND

I. SINCE 1998, BRAD KELLOGG HAS FILED FOR CHAPTER 13 PROTECTION FOUR TIMES AND CHAPTER 11 PROTECTION ONCE AND HAS CAUSED A COMPANY IN WHICH HE IS THE SOLE SHAREHOLDER AND OFFICER TO FILE FOR CHAPTER 7 PROTECTION

A. Brad Kellogg's 1998 Chapter 13 Case Was Dismissed By This Court

On May 18, 1998, Brad Kellogg filed his first Chapter 13 case in United States Bankruptcy Court for the District of Minnesota.¹ The case was assigned to this Court as Case No. 4-98-3294. On June 1, 1998, Brad Kellogg filed his Chapter 13 plan. Docket Number 7. Under that plan, he proposed to pay the Chapter 13 trustee approximately \$117,000 over twenty-eight months. These payments would enable the Chapter 13 trustee to pay in full the Internal Revenue Service, Minnesota Department of Revenue, and the unsecured creditors, and cure the default on Brad Kellogg's home mortgage.

Less than two months after the case was filed, the Chapter 13 trustee moved to dismiss because Brad Kellogg failed to commence making payments proposed by the plan. Docket Number 15. Brad Kellogg apparently cured the payment defaults and on August 11, 1998, this Court entered an order confirming Brad Kellogg's Chapter 13 plan. Docket Number 17.

A couple of months later, the Chapter 13 trustee again moved to dismiss the case because Brad Kellogg failed to make the payments required by the plan. Docket Number 17. On December 9, 1998, this Court entered an order providing that Brad Kellogg must make payments according to an accelerated payment schedule to cure the payment defaults. Docket Number 19. The order also provided that, in the event that Brad Kellogg failed to make such payments, the Chapter 13 trustee was authorized to obtain a dismissal of the case on an *ex parte* expedited basis by filing an affidavit attesting to the defaults. *Id.* On April 16, 1999, the Chapter 13 trustee filed

¹ The petition was signed and filed by Joseph Dicker, Esq. The statement of compensation states that he was paid \$1,000 for filing the case.

an affidavit stating Brad Kellogg failed to make certain payments as required by the confirmed plan and this Court's order dated December 9. This Court summarily entered an order dismissing Brad Kellogg's Chapter 13 case. Docket Number 21.

B. Brad Kellogg's 2001 Chapter 13 Case Was Dismissed By This Court

On June 25, 2001, Brad Kellogg filed his second Chapter 13 case and it was also assigned to this Court as Case No. 01-42802.² Over two weeks later, Brad Kellogg filed his Chapter 13 plan. Docket Number 4. He proposed to pay the Chapter 13 trustee \$3,000 per month for thirty-six months for a total of \$108,000. The trustee would then pay the Minnesota Department of Revenue's claim (as scheduled) in full and cure the default on Brad Kellogg's home mortgage. The unsecured creditors would receive a 34% distribution.

Despite the purported promise of full payment, the Department of Revenue moved to dismiss the case due to Brad Kellogg's failure to pay its claim with interest as required by section 1325(a)(5) and to file tax returns as required by sections 1322(a)(2) and 1325(a)(6). Docket Number 10. Shortly thereafter, a number of unsecured creditors moved to dismiss the case because Brad Kellogg had filed the petition in bad faith. Docket Number 12.

On September 14, 2001, this Court entered an order compelling Brad Kellogg to file tax returns for the years 1998, 1999, and 2000, and to file a modified Chapter 13 plan. Docket Number 16. This Court also scheduled a subsequent hearing for October 4, 2001. At Brad Kellogg's behest, that hearing was subsequently postponed on two occasions. The hearing was finally rescheduled for December 6, 2001. At that hearing, the Court denied confirmation of Brad Kellogg's Chapter 13 plan and dismissed the Chapter 13 case. Docket Number 32.

² The petition was signed and filed by Joseph Dicker, Esq. The statement of compensation states that he was paid \$1,500 to file the petition.

C. Brad Kellogg's 2002 Chapter 11 Case Was Dismissed By Judge Kishel

Approximately four months after his second Chapter 13 case had been dismissed, Brad Kellogg filed for Chapter 11 protection.³ The case was assigned to The Honorable Gregory F. Kishel as Case No. 02-31191. Brad Kellogg scheduled approximately \$480,000 in assets and \$950,000 in liabilities. Docket Number 3. In addition, Brad Kellogg stated his current monthly income was approximately \$10,000, but his current monthly expenditures were approximately \$9,700. *Id.* On May 6, 2002, at the meeting of creditors, Brad Kellogg stated his income from Kellogg Media, Inc. was \$600,000 for 1999, \$300,000 to \$400,000 for 2000, \$300,000 for 2001, and he projected income of approximately \$700,000 for 2002. Unsworn Declaration of Stephen Kellogg (“Stephen Kellogg Decl.”) ¶ 4.

Shortly after the filing, the United States trustee moved to dismiss the Chapter 11 case because Brad Kellogg had reported no monthly income in the months since his filing and, therefore, he did not have sufficient cash flow to fund a Chapter 11 plan. Docket Number 14. In response to this motion, Brad Kellogg filed a plan of reorganization and disclosure statement. In the plan, Brad Kellogg proposed to pay the claims of the Internal Revenue Service, the Department of Revenue, and the secured creditors in full. Brad Kellogg also proposed making a 94% distribution to unsecured creditors.

On December 13, 2002, The Honorable Gregory F. Kishel entered an order dismissing the Chapter 11 case. Docket Number 50. Judge Kishel also found that Brad Kellogg was ineligible for relief under Chapter 11 or Chapter 13 for a period of 180 days.

³ The petition was signed and filed by Joseph Dicker, Esq. The statement of compensation states that he was paid \$6,000 for filing the petition.

D. Brad Kellogg's 2003 Chapter 13 Case Was Dismissed By This Court

Less than a year later, Brad Kellogg filed his third Chapter 13 case. Again, the case was assigned to this Court as Case No. 03-45589.⁴ In his Chapter 13 plan, Brad Kellogg proposed to make monthly payments in the amount of \$1,000 and quarterly payments of \$41,000 for a total of \$749,000. Docket Number 6. The trustee would then pay in full the federal, state and local taxing authorities' claims (as scheduled) and cure the default on Brad Kellogg's home mortgage. A 96% distribution would be made to unsecured creditors.

On September 19, 2003, the Department of Revenue moved to dismiss the case because Brad Kellogg failed to provide for the full payment of its secured claim as required by section 1325(a)(5) and the plan failed to provide for the payment of outstanding income taxes as required by 1322(a)(2). Docket Number 15. A few days later, the Chapter 13 trustee moved to dismiss the case because Brad Kellogg failed to appear at the meeting of creditors and failed to make the first payment proposed by the plan. Docket Number 17. On October 29, 2003, the Chapter 13 trustee amended the motion to dismiss to incorporate additional grounds for dismissal including that the plan was not filed in good faith. Docket Number 21.

In response to these objections, Brad Kellogg filed a modified Chapter 13 plan. Docket Number 24. Under the modified Chapter 13 plan, Brad Kellogg proposed paying to the trustee an additional \$150,000 for a total of \$880,000, to distribute to creditors. Nonetheless, after defaulting on a payment required by a stipulation for relief from stay, Brad Kellogg filed an application to voluntarily dismiss the case. Docket No. 35. On January 6, 2004, this Court entered an order dismissing Brad Kellogg's Chapter 13 case. Docket Number 37.

⁴ The petition was signed and filed by Joseph Dicker, Esq. The statement of compensation states that he was paid \$1,500 to file the petition.

E. Brad Kellogg Caused Kellogg Media, Inc. To File For Chapter 7 Protection In 2004 And The Chapter 7 Trustee Has Moved To Dismiss That The Case

Brad Kellogg is the sole shareholder and officer of Kellogg Media. Unsworn Declaration of Ryan T. Murphy (“Murphy Decl.”) ¶ 2. In 2003, Stephen Kellogg obtained a default judgment against Kellogg Media in Hennepin County. Id. In attempting to collect on that judgment, Stephen Kellogg served Kellogg Media with post-judgment discovery requests. Id. Kellogg Media failed to respond and Stephen Kellogg obtained an order that compelled Kellogg Media to respond or to show cause. Id. Judge Leung ordered Brad Kellogg to personally appear before the Court and show cause why he should not be found in contempt. Id. On the morning of the contempt hearing, Brad Kellogg directed Kellogg Media to file for Chapter 7 protection and thereby stayed entry of a contempt order. Id. Kellogg Media’s Chapter 7 case was assigned to this Court as Case No. 04-42960.⁵

The meeting of creditors was initially scheduled for June 21, 2004. Docket Number 5. On June 16, 2004, Kellogg Media postponed the meeting of creditors to July 6, 2004. Docket Number 6. Brad Kellogg did not appear at that time so the meeting of creditors was rescheduled for August 3, 2004. Docket Number 7. Again, Brad Kellogg failed to appear at that meeting of creditors.

The Chapter 7 trustee rescheduled the meeting of creditors for August 19, 2004 on the condition that should Brad Kellogg again fail to appear, Kellogg Media’s case would be dismissed. Docket Number 9. Again, Brad Kellogg failed to appear. Id. As a result, the Chapter 7 trustee has moved to dismiss Kellogg Media’s case. Id.

⁵ The petition was signed and filed by Joseph Dicker, Esq. The statement of compensation states that he was paid \$1,500 to file the petition.

II. BRAD KELLOGG'S PENDING CHAPTER 13 CASE

A. Stephen Kellogg's Claim

Brad Kellogg and Stephen Kellogg are brothers. Stephen Kellogg Decl. at ¶ 2. Beginning in the early 1980's, Stephen Kellogg loaned Brad Kellogg certain sums of money that Brad Kellogg used for personal and business expenses. Id. Brad Kellogg made occasional payments on these loans to induce Stephen Kellogg to loan him increasingly larger sums of money. Id.

In 1997, Stephen Kellogg loaned Brad Kellogg approximately \$90,000 as evidenced by a promissory note. Id. at ¶ 3. Brad Kellogg failed to make any payments on that note. Id. As a result, Stephen Kellogg filed suit against Brad Kellogg in Carver County District Court. Id. The court entered summary judgment in Stephen Kellogg's favor in the amount of \$141,235.52. Id. Brad Kellogg has repeatedly promised to pay this debt in full as evidenced by a series of agreements including a forbearance agreement; however, the debt remains outstanding. Id.

B. Stephen Kellogg Filed The Present Chapter 13 Petition To Stay Entry Of A Contempt Order

On May 26, 2004, Stephen Kellogg served post-judgment interrogatories and document requests upon Brad Kellogg. Murphy Decl. ¶3. Brad Kellogg did not respond to the post-judgment discovery requests within the time required under the Minnesota Rules of Civil Procedure. Id. As a result, Stephen Kellogg moved to compel discovery and for an order to show cause. Id. Brad Kellogg did not appear at that hearing. Id. As a result, Judge Eide entered an order compelling discovery and ordering Brad Kellogg to personally appear on July 27, 2004 to show cause why he had not timely responded to the post-judgment discovery requests. Id. On July 27, 2004, Judge Eide found Brad Kellogg in contempt because he failed to appear to show cause. Id. To avoid the issuance of an arrest warrant and imposition of fines, Brad Kellogg

notified the court and Stephen Kellogg later that day that he had filed for Chapter 13 protection and the contempt order was thereby stayed.⁶

ARGUMENT

I. BRAD KELLOGG’S CHAPTER 13 CASE SHOULD BE DISMISSED BECAUSE IT WAS FILED IN BAD FAITH

Section 1307(c) of the Bankruptcy Code provides that a court may dismiss a Chapter 13 case for cause:

on request of a party in interest or the United States trustee and after notice of a hearing, the court may convert a case under this chapter to a case under Chapter 7 of this title, or may dismiss a case under this chapter whichever is in the best interests of creditors and the estate, for cause

11 U.S.C. § 1307(c) (emphasis added). Filing a Chapter 13 petition in bad faith constitutes “cause” for dismissal.⁷ Molitor v. Eidson (In re Molitor), 76 F.3d 218, 220 (8th Cir. 1996); In re Soost, 290 B.R. 116, 133 (Bankr. D. Minn. 2003).

To determine whether a debtor has filed the Chapter 13 petition in bad faith, the Court considers “the totality of circumstances surrounding the filing of the petition and the presentation

⁶ The petition was signed and filed by Joseph Dicker, Esq. The statement of compensation states that he was paid \$1,500 to file the petition. Stephen Kellogg reserves the right to seek sanctions against Joseph Dicker, Esq. under Fed. R. Bankr. P. 9011 for what appears to be a failure to conduct an inquiry into Brad Kellogg’s financial situation prior to filing the Chapter 13 case and repetitive filings that enable Brad Kellogg to abuse the bankruptcy system. See In re Belden, 144 B.R. 1010, 1023 (Bankr. D. Minn. 1992).

⁷ A debtor proposing a plan under Chapter 13 must show that the “plan has been proposed in good faith. . . .” 11 U.S.C. § 1325(a)(3). The difference between bad faith in filing a case and good faith in proposing a plan is “nominal.” In re Larson, 245 B.R. 609, 617 (Bankr. D. Minn. 2000); In re Mattson, 241 B.R. 629, 635 (Bankr. D. Minn. 1991). “Indeed, the Eighth Circuit has articulated the same standard for finding bad faith in both instances.” In re Larson, 245 B.R. at 617. Thus, Brad Kellogg’s lack of good faith in proposing the modified Chapter 13 plan is manifested by all the same facts that demonstrate the petition is filed in bad faith.

of the plan.” In re Soost, 290 B.R. at 122. The specific factors that bear upon this determination are:

- whether the Bankruptcy Code is being unfairly manipulated;
- the frequency with which the debtor has sought relief under the Bankruptcy Code;
- the debtor’s consistency and truthfulness in legal proceedings before and during the bankruptcy process;
- the type of debts sought to be discharged; and
- the debtor’s motivation and sincerity in seeking Chapter 13 relief.

In re Soost, 290 B.R. at 122; In re Belden, 144 B.R. 1010, 1019 (Bankr. D. Minn. 1992). The bottom line “is whether the debtor is attempting to thwart his creditors or is making an honest attempt to repay them.” In re Mattson, 241 B.R. 629, 637 (Bankr. D. Minn. 1999).

A. Brad Kellogg Has Unfairly Manipulated The Bankruptcy Code

To take advantage of the protections afforded by Chapter 13 of the Bankruptcy Code, the debtor must have a reasonable expectation that he can successfully reorganize and he must undertake efforts to carry out that reorganization. In re Kinney, 51 B.R. 840, 845 (Bankr. C.D. Cal. 1985); Shell Oil Co. v. Waldron (In re Waldron), 785 F.2d 936, 939 (11th Cir. 1986); see also In re SGL Carbon Corp., 200 F.3d 154, 163-69 (3rd Cir. 1999) (The purpose of reorganization is to assist the financially distressed by providing them breathing space in which to return to a viable state). The Bankruptcy Code cannot be used merely to invoke the automatic stay and, thereby, preclude a creditor from exercising his rights. In re Ouverson, 79 B.R. 830, 832 (Bankr. N.D. Iowa 1987); In re Kinney, 51 B.R. at 845-46.

Brad Kellogg filed the petition to forestall the issuance of an arrest warrant and imposition of fines as a result of being found in contempt. He does not intend to successfully reorganize and will not undertake efforts to carry out that reorganization as evidenced by the

dismissal of each and everyone of his previous four reorganization petitions. Indeed, Brad Kellogg refused to appear at the meeting of creditors in the present case. Because Brad Kellogg has not filed his Chapter 13 petition with the intent to successfully reorganize or undertaken efforts to carry out that reorganization, rather, to avoid the issuance of an arrest warrant and imposition of fines, he is not entitled to the protections afforded by Chapter 13 of the Bankruptcy Code.

B. Brad Kellogg Is A Serial Filer

The number of times a debtor has sought the protections afforded by the Bankruptcy Code is relevant to the determination of bad faith. In re Belden, 144 B.R. at 1020. This is Brad Kellogg's fifth reorganization case. More specifically, it is his fourth Chapter 13 case. All of his previous cases have been dismissed. In fact, Brad Kellogg only has had one Chapter 13 plan confirmed – his first – and that case was subsequently dismissed by this Court for failure to make payments to the trustee as required by the confirmed plan. Moreover, Brad Kellogg recently caused Kellogg Media to file for Chapter 7 (also to avoid being found in contempt) and the Chapter 7 trustee has moved to dismiss that case because Brad Kellogg failed to appear at three meetings of creditors.

C. Brad Kellogg's Lack Of Consistency And Truthfulness Before The Courts

A debtor's lack of consistency and truthfulness before the Bankruptcy Court and other courts is relevant to the bad faith determination. In re Soost, 298 B.R. at 123. Brad Kellogg has failed to comply with orders issued by the Minnesota courts and the bankruptcy court. Brad Kellogg failed to comply with orders issued by judges in Hennepin and Carver County compelling him to disclose his and Kellogg Media's assets and to personally appear to show cause. Brad Kellogg has also failed to comply with a litany of orders issued by the bankruptcy court in his four previous reorganization cases. This caused the bankruptcy court to dismiss each

and every one of his cases. Most recently, Brad Kellogg failed to appear for the meeting of creditors in the present case, which caused the Chapter 13 trustee to file this motion.

D. Brad Kellogg Is Indebted To His Brother, An Individual With Modest Means

The identity of the creditor, whether institutional or individual, is relevant to the determination of bad faith. In re Sitars, 150 B.R. at 722. “The personal impact of the debtor’s conduct on the individual creditor, both at the time of the infliction of the injury and in its future, is also significant.” Id. at 722-23. Stephen Kellogg is an individual with modest means, particularly since Brad Kellogg failed to repay Stephen Kellogg’s loan. Stephen Kellogg Decl. ¶ 5. The non-payment of the debt has had a significant impact upon him. Id. The debt Brad Kellogg seeks to discharge, however, is substantial. Indeed, it is in excess of the \$120,000 as scheduled by Brad Kellogg. Id.

E. Brad Kellogg Did Not File The Petition With A Sincere Effort To Repay Creditors And Reorganize

The debtor’s motivation in filing the Chapter 13 case is an important factor. In re Larson, 245 B.R. at 617; In re Belden, 144 B.R. at 1020-21. Brad Kellogg has not filed the Chapter 13 petition in a legitimate attempt to reorganize; rather, this case was filed to invoke the automatic stay and forestall the issuance of an arrest warrant and imposition of fines by the District Court of Carver County. Indeed, Brad Kellogg has filed four previous reorganization petitions, but his creditors remain unpaid because in each instance the petition was dismissed. Thus, Brad Kellogg did not file the present Chapter 13 petition with the manifest attitude of one who seeks Chapter 13 relief sincerely and in good faith.

III. BRAD KELLOGG SHOULD BE BARRED FROM FILING A SUBSEQUENT PETITION FOR A PERIOD OF THREE YEARS

11 U.S.C. § 349 provides that the court can bar the debtor from filing a subsequent petition for cause:

Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

11 U.S.C. § 349; see also In re Beldon, 144 B.R. at 1022. A finding of bad faith in filing the petition constitutes “cause” under section 349. In re Beldon, 144 B.R. at 1022; see also In re Tomlin, 105 F.3d 933, 937 (4th Cir. 1997). As described in detail above, Brad Kellogg filed his Chapter 13 petition in bad faith. Therefore, this Court should enter an order barring Brad Kellogg from seeking protection under any chapter of the Bankruptcy Code for a period of three years.

CONCLUSION

Stephen Kellogg respectfully requests that this Court dismiss Brad Kellogg’s Chapter 13 case and enter an order barring him from seeking protection under any chapter of the Bankruptcy Code for a period of three years.

Dated: October 4, 2004

/s/ Ryan T. Murphy

Clinton E. Cutler (#158094)
Ryan T. Murphy (#311972)
FREDRIKSON & BYRON, P.A.
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Minneapolis, MN 55402-1425
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ATTORNEYS FOR STEPHEN KELLOGG

#3004087\2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Fredrick Brad Kellogg,

Chapter 13 Bankruptcy

Debtor.

Bky No. 04-44148

UNSWORN DECLARATION OF STEPHEN KELLOGG

Stephen Kellogg makes the following declaration in support of his joinder in the Chapter 13 Trustee's Motion to Dismiss:

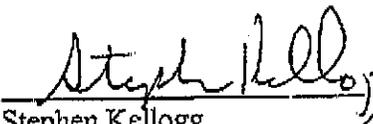
1. I am a creditor in Fredrick Brad Kellogg's ("Brad Kellogg's") Chapter 13 case.
2. Brad Kellogg and I are brothers. Beginning in the early 1980's, I loaned Brad Kellogg certain sums of money that Brad Kellogg used for personal and business expenses. Brad Kellogg made occasional payments on these loans to induce me to loan him increasingly larger sums of money.
3. In 1997, I loaned Brad Kellogg approximately \$90,000 as evidenced by a promissory note. Brad Kellogg failed to make any payments on that note. As a result, I filed suit against Brad Kellogg in Carver County District Court. The court entered summary judgment in my favor in the amount of \$141,235.52. Brad Kellogg has repeatedly promised to pay this debt in full as evidenced by a series of agreements including a forbearance agreement; however, the debt remains outstanding.
4. Brad Kellogg filed for Chapter 11 protection in 2002. At the meeting of creditors on May 2, 2002, Brad Kellogg stated his income from Kellogg Media, Inc. was

\$600,000 for 1999, \$300,000 to \$400,000 for 2000, \$300,000 for 2001, and he projected income of approximately \$700,000 for 2002

5. I am an individual with modest means, particularly since Brad Kellogg failed to repay the money I lent him. The non-payment of the debt has had a significant impact upon me. The debt Brad Kellogg seeks to discharge is in excess of the \$120,000 that he has scheduled.

6. I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: October 4, 2004


Stephen Kellogg

#302312511

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Fredrick Brad Kellogg,
Debtor.

Chapter 13 Bankruptcy
Bky No. 04-44148

UNSWORN DECLARATION OF RYAN T. MURPHY

Ryan T. Murphy makes the following declaration in support of joinder of Stephen Kellogg in the Chapter 13 Trustee's Motion to Dismiss:

1. I am an attorney with Fredrikson & Byron, P.A. and am one of the attorneys representing Stephen Kellogg, a creditor in the above-captioned Chapter 13 case.

2. Fredrick Brad Kellogg ("Brad Kellogg") is the sole shareholder and officer of Kellogg Media. In 2003, Stephen Kellogg obtained a default judgment against Kellogg Media in Hennepin County. In attempting to collect on that judgment, Stephen Kellogg served Kellogg Media with post-judgment discovery requests. Kellogg Media failed to respond and Stephen Kellogg obtained an order that compelled Kellogg Media to respond or to show cause. Judge Leung ordered Brad Kellogg to personally appear before the Court and show cause why he should not be found in contempt. On the morning of the contempt hearing, Brad Kellogg directed Kellogg Media to file for Chapter 7 protection and thereby stayed entry of a contempt order.

3. On May 26, 2004, Stephen Kellogg served post-judgment interrogatories and document requests upon Brad Kellogg. Brad Kellogg did not respond to the post-

judgment discovery requests within the time required under the Minnesota Rules of Civil Procedure. As a result, Stephen Kellogg moved to compel discovery and for an order to show cause. Brad Kellogg did not appear at that hearing. As a result, Judge Eide entered an order compelling discovery and ordering Brad Kellogg to personally appear on July 27, 2004 to show cause why he had not timely responded to the post-judgment discovery requests. On July 27, 2004, Judge Eide found Brad Kellogg in contempt because he failed to appear to show cause. To avoid the issuance of an arrest warrant and imposition of fines, Brad Kellogg notified the court and Stephen Kellogg later that day that he had filed for Chapter 13 protection and the contempt order was thereby stayed.

4. I declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Dated: October 4, 2004

/s/ Ryan T. Murphy
Ryan T. Murphy

#3023127\1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Fredrick Brad Kellogg,
Debtor.

Chapter 13 Bankruptcy
Bky No. 04-44148

CERTIFICATE OF SERVICE

Ryan T. Murphy, under penalty of perjury, states that on October 4, 2004 he caused to be served the following:

1. Joinder Of Stephen Kellogg In Chapter 13 Trustee's Motion To Dismiss;
2. Unsworn Declaration of Stephen Kellogg;
3. Unsworn Declaration of Ryan T. Murphy; and
4. Proposed Order

by sending true and correct copies as noted on the attached Service List.

Dated: October 4, 2004

/s/Ryan T. Murphy
Ryan T. Murphy

#3023150\1

SERVICE LIST
IN RE: FREDERICK B. KELLOGG

Jasmine Z. Keller, Chapter 13

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#3023157\1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Fredrick Brad Kellogg,
Debtor.

Chapter 13 Bankruptcy
Bky No. 04-44148

**ORDER DISMISSING DEBTOR'S CASE AND BARRING HIM FROM
FILING A SUBSEQUENT PETITION FOR A PERIOD OF THREE YEARS**

The Chapter 13 Trustee's Motion to Dismiss and joinder of Stephen Kellogg in Chapter 13 Trustee's Motion to Dismiss came before the undersigned on _____, 2004. Appearances, if any, are noted in the record.

Based upon the motion, the arguments of counsel, all the files, records and proceedings herein, the Court being fully advised in the premises, and the Court's Findings of Fact and Conclusions of Law, if any, having been stated orally and recorded in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The Motion is granted.
2. Fredrick Brad Kellogg's Chapter 13 case is dismissed.
3. Fredrick Brad Kellogg is barred from seeking protection under any

Chapter of the Bankruptcy Code for a period of three years.

Dated: October ____, 2004

The Honorable Nancy C. Dreher
United States Bankruptcy Judge