

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Chapter 13
JEFFREY M. HART and)
RHONDA S. HART,) Case No. BKY 04-44269
)
Debtors.)

OBJECTIONS OF THE UNITED STATES
OF AMERICA TO THE CONFIRMATION OF THE
DEBTORS' MODIFIED CHAPTER 13 PLAN DATED
SEPTEMBER 8, 2004, AND MOTION TO DISMISS

THE UNITED STATES OF AMERICA, Internal Revenue Service ("IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, submits the following objections to the Confirmation of the Modified Chapter 13 Plan dated September 8, 2004 (hereinafter "the Plan") proposed by this debtor and Motion to Dismiss:

1. The confirmation hearing is scheduled for October 21, 2004, at 10:30 a.m. at U.S. Bankruptcy Court, U.S. Courthouse, Courtroom 8 West, 300 South Fourth Street, Minneapolis, Minnesota 55415.

2. The Court has jurisdiction over these objections and Motion to Dismiss pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Loc. R. Bankr. P. (D. Minn.) 1070-1. This is a core proceeding. The petition commencing this Chapter 13 case was filed August 2, 2004. This case is now pending in this Court.

3. These objections and Motion to Dismiss arise under 11 U.S.C. §§ 1322(a)(2); 1325(a)(5) and (6); and 1307(c) and Fed. R. Bankr. P. 3015. These objections and Motion to Dismiss are filed under Fed. R. Bankr. P. 9013 and 9014 and Loc. R. Bankr. P. (D. Minn.) 3015-3, 3020-1 and 3020-3.

4. The United States, IRS, has a secured claim of \$12,512.21, an unsecured priority claim of \$10,977.85 and an unsecured general claim of \$18,638.79 against these debtors. The total claim is \$42,128.85, as set forth in the filed Proof of Claim of the IRS, a copy of which is attached hereto as Exhibit A.

5. The IRS may have additional priority claims due from these debtors, but they are undetermined because the debtors have not filed federal income tax returns for the years 1999, 2000 and 2001 as explained in the Affidavit of Jean Krysinski, which is attached as Exhibit B.

6. The Plan provides for the full payment of claims entitled to priority under 11 U.S.C. § 507; however, the Plan merely estimates the amount owed to the IRS as \$3,955.00 and proposes to pay \$3,955.00. While the Plan provides that the trustee will pay the amounts actually owed as priority claims, the actual amount of the priority claim of the IRS cannot be determined until these debtors file their federal income tax return for the year 2001.

7. Without a determination of the actual amount of the priority claim of the IRS, the feasibility of the debtors' Plan cannot be determined in accordance with 11 U.S.C. § 1325(a)(6).

8. The Plan is not feasible and does not comply with 11 U.S.C. § 1325(a)(6) in that the debtors will not be able to make all of the payments under a plan that properly provides for the IRS priority and secured claims and comply with the Plan. The Plan appears to be seriously underfunded.

9. The Plan, in Paragraph 11 provides that upon the completion of payment of the secured position (sic) of any claim, the property securing said claim shall vest in the debtor free and clear of any lien, claim or interest of the secured creditor. The United States objects to this provision on the basis that these debtors must complete all of the payments to all creditors under their Plan before they may obtain such relief.

10. The debtors' Plan fails to provide for payments to fully pay the secured claim of the IRS. As the Plan fails to provide for the secured claim of the IRS and as the IRS has not accepted the Plan, the Plan cannot be confirmed under 11 U.S.C. § 1325(a)(5).

11. Failure of the debtors' Plan to provide for full payment of the allowed priority and secured tax claims of the IRS is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, for the foregoing reasons, the United States prays that the Modified Chapter 13 Plan filed by these debtors be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Date: October 5, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States
of America, IRS

VERIFICATION

I, Jean A. Krysinski, Bankruptcy Specialist for the Internal Revenue Service, the movant named in the foregoing Chapter 13 Bankruptcy for Jeffrey M. Hart, Rhonda S. Hart as stated on the petition, Bankruptcy No. 04-44269, declares 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*

Signed:

Jean A. Krysinski
Jean A. Krysinski
Bankruptcy Specialist

UNITED STATES BANKRUPTCY COURT		DISTRICT OF MINNESOTA	PROOF OF CLAIM				
Name of Debtor JEFFREY M & RHONDA S HART		Case Number 04-44269	 <p style="text-align: center;">THIS SPACE IS FOR COURT USE ONLY</p>				
<p>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p>							
Name of Creditor (The person or other entity to whom the debtor owes money or property): Department of the Treasury - Internal Revenue Service		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.					
Name and address where notices should be sent: Internal Revenue Service Internal Revenue Service 316 North Robert Street Stop 5700STP St. Paul, MN 55101 Telephone number: (651) 312-7988 Creditor #:5998689							
Account or other number by which creditor identifies debtor: see attachment		Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____					
<p>1. Basis for Claim</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other _____ </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="text-align: center;">(date) (date)</div> </div> </div>							
2. Date debt was incurred: see attachment		3. If court judgment, date obtained:					
<p>4. Total Amount of Claim at Time Case Filed: \$</p> <table style="width:100%; border: none;"> <tr> <td style="text-align: center; width: 25%;"><u>18,638.79</u> <small>(unsecured)</small></td> <td style="text-align: center; width: 25%;"><u>12,512.21</u> <small>(secured)</small></td> <td style="text-align: center; width: 25%;"><u>10,977.85</u> <small>(priority)</small></td> <td style="text-align: center; width: 25%;"><u>42,128.85</u> <small>(Total)</small></td> </tr> </table> <p>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.</p>				<u>18,638.79</u> <small>(unsecured)</small>	<u>12,512.21</u> <small>(secured)</small>	<u>10,977.85</u> <small>(priority)</small>	<u>42,128.85</u> <small>(Total)</small>
<u>18,638.79</u> <small>(unsecured)</small>	<u>12,512.21</u> <small>(secured)</small>	<u>10,977.85</u> <small>(priority)</small>	<u>42,128.85</u> <small>(Total)</small>				
<p>5. Secured Claim.</p> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>see below*</u> Value of Collateral: \$ <u>see below*</u> <small>* All of debtor(s) right, title and interest to property - 26 U.S.C § 6321. Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ <u>12,512.21</u></small>		<p>7. Unsecured Priority Claim.</p> <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ <u>10,977.85</u> Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>					
<p>6. Unsecured Nonpriority Claim \$ <u>18,638.79</u></p> <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or part of your claim is entitled to priority.							
<p>8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.</p>		<p>THIS SPACE IS FOR COURT USE ONLY</p> <div style="border: 2px solid black; padding: 10px; width: fit-content; margin: auto;"> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">EXHIBIT</p> <p style="text-align: center; font-size: 2em; margin-top: 10px;">A</p> </div>					
<p>9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.</p>							
<p>10. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.</p>							
Date 09/21/2004	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney if any) <p style="text-align: center;"><i>Jean Krynski</i> /s/ JEAN KRYSINSKI 41-02562, Bankruptcy Specialist</p>						

Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

Form 10
Attachment

In the Matter of: JEFFREY M & RHONDA S HART
707 SHADY RDG RD
HUTCHINGSON, MN 55350

Docket Number	04-44269
Type of Bankruptcy Case	Chapter 13
Date of Petition	08/02/2004

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-7841	INCOME	12/31/1996	08/14/2000	\$1,373.53	\$1,384.61	\$1,376.11	03/05/2004	McLEOD E
XXX-XX-7841	INCOME	12/31/1997	02/28/2000	\$1,566.27	\$2,000.93	\$1,660.20	03/05/2004	McLEOD E
XXX-XX-7841	INCOME	12/31/2002	05/26/2003	\$2,621.00	\$361.14	\$168.42	03/05/2004	McLEOD E
				\$5,560.80	\$3,746.68	\$3,204.73		

Total Amount of Secured Claims: \$12,512.21

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9080	INCOME	12/31/2001	1 UNASSESSED-NO RETURN	\$4,506.00	\$0.00
XXX-XX-7841	INCOME	12/31/2001	1 UNASSESSED-NO RETURN	\$5,304.60	\$0.00
XXX-XX-7841	INCOME	12/31/2003	05/31/2004	\$1,150.00	\$17.25
				\$10,960.60	\$17.25

Total Amount of Unsecured Priority Claims: \$10,977.85

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9080	INCOME	12/31/1999	1 UNASSESSED-NO RETURN	\$4,326.20	\$0.00
XXX-XX-7841	INCOME	12/31/1999	1 UNASSESSED-NO RETURN	\$4,711.60	\$0.00
XXX-XX-9080	INCOME	12/31/2000	1 UNASSESSED-NO RETURN	\$4,394.40	\$0.00
XXX-XX-7841	INCOME	12/31/2000	1 UNASSESSED-NO RETURN	\$5,178.80	\$0.00
				\$18,611.00	\$0.00

Penalty to date of petition on unsecured priority claims (including interest thereon) \$27.79

Total Amount of Unsecured General Claims: \$18,638.79

1 UNASSESSED TAX LIABILITIES(S) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.

INTERNAL REVENUE SERVICE
FACSIMILE FEDERAL TAX LIEN DOCUMENT

Lien Recorded : 03/05/2004 - 15:56PM
Recording Number: 340771
UCC Number :
Liber :
Page :

Area: SMALL BUSINESS/SELF EMPLOYED #9
Lien Unit Phone: (800) 829-3903

IRS Serial Number: 160698104

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :
JEFFREY M & RHONDA S HART

Residence :
707 SHADY RIDGE RD
HUTCHINSON, MN 55350-1413

With respect to each assessment below, unless notice of lien
is refiled by the date in column(e), this notice shall constitute
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/1996	317-70-7841	08/14/2000	09/13/2010	3565.74
* 1040	12/31/1997	317-70-7841	02/28/2000	03/30/2010	4739.53
* 1040	12/31/1998	317-70-7841	12/06/1999	01/05/2010	5225.41
1040	12/31/2002	317-70-7841	05/26/2003	06/25/2013	2710.51

Filed at: COUNTY RECORDER
McLEOD E
GLENCOE, MN 55336

Total \$ 16241.19

This notice was prepared and executed at ST PAUL, MN
on this, the 04th day of March, 2004.

Authorizing Official:
WANDA W. BROWN

Title:
ACS 15-00-0000

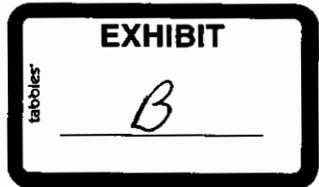
UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
BKY No. 04-44269

JEFFREY M. HART,)
RHONDA S. HART,)
 Plaintiff,)
) AFFIDAVIT
 v.))
))
INTERNAL REVENUE SERVICE,))
))
 Defendant.)

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Jean A. Krynski, Bankruptcy Specialist, being first duly sworn, deposes and says:

1. I am employed by Territory 9 of the Internal Revenue Service Small Business/Self-Employed Division.
2. One of my duties is to review Chapter 13 Bankruptcy petitions and the Government records regarding the petitioner.
3. I have determined Jeffrey M. Hart has not filed the federal income tax returns for the calendar years ending December 31, 1999, December 31, 2000, and December 31, 2001.



4. I have determined Rhonda S. Hart has not filed the federal income tax returns for the calendar years ending December 31, 1999, December 31, 2000 and December 31, 2001.

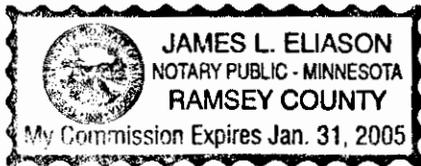
FURTHER YOUR AFFIANT SAYETH NOT.

Jean A. Krysin'ski
Jean A. Krysin'ski

Subscribed and Sworn to Before Me

This 27th Day of September, 2004.

James L. Eliason
NOTARY



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Chapter 13
JEFFREY M. HART and)
RHONDA S. HART,) Case No. BKY 04-44269
)
Debtors.)

MEMORANDUM IN SUPPORT OF OBJECTIONS OF THE
UNITED STATES OF AMERICA TO THE CONFIRMATION
OF DEBTORS' MODIFIED CHAPTER 13 PLAN
DATED SEPTEMBER 8, 2004 AND MOTION TO DISMISS

THE UNITED STATES OF AMERICA, Internal Revenue Service ("IRS"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant United States Attorney, submits the following Memorandum in Support of its Objections to Confirmation of Debtors' Modified Chapter 13 Plan dated September 8, 2004 (hereinafter "the Plan") and Motion to Dismiss.

1. The United States, IRS, has a secured priority claim of \$12,512.21, an unsecured priority claim of \$10,977.85 and an unsecured general claim of \$18,638.79 against these debtors. The total claim is in the amount of \$42,128.85 as set forth in the filed Proof of Claim of the IRS.

2. Since no objections to the tax claims of the IRS have been filed, the claims are deemed allowed, pursuant to 11 U.S.C. § 502(a).

3. As the debtors have not filed federal income tax returns for the years 1999, 2000 and 2001, the actual tax liabilities are

unknown. Any tax liabilities due for year 2001 would be priority taxes, which must be paid in full. These debtors should be required to file their federal income tax returns so that the tax liabilities can be fully determined and properly treated by the Plan.

4. The debtors' Plan fails to provide for adequate payments to fully pay the priority claims of the IRS under 11 U.S.C. § 507 as required under 11 U.S.C. § 1322(a)(2).

5. The debtors' Plan does not comply with 11 U.S.C. § 1325(a)(6) in that the debtors will not be able to make all of the payments under a Plan that provides for the proper treatment of the IRS priority and secured claims. The debtors have insufficient income to fund such a Plan.

6. The debtors' Plan fails to provide for payments to fully pay the secured claim of the IRS. As the Plan fails to provide for the secured claim of the IRS and as the IRS has not accepted the Plan, the Plan cannot be confirmed under 11 U.S.C. § 1325(a)(5).

7. The Plan, in Paragraph 11 provides for the release of the federal tax lien upon payment of the amount of the secured claim. The United States asserts that the debtors must make all payments under the Plan and obtain their discharge before the IRS is required to release its lien. See In re Scheierl, 176 B.R. 498 (Bankr. D.Minn. 1995). But see In re Lee, 156 B.R. 628 (Bankr. D.Minn. 1993), aff'd 162 B.R. 217 (D.Minn. 1993). Were the United States to release its federal tax lien before completion of the

Plan, the United States would be unable to reinstate a replacement lien and maintain the same priority as the earlier-filed lien.

8. Failure of the debtors' Plan to provide for full payment of the allowed priority and secured tax claims of the IRS is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

WHEREFORE, for the foregoing reasons, the United States prays that the Modified Chapter 13 Plan filed by these debtors be denied confirmation and that the case be dismissed pursuant to 11 U.S.C. § 1307(c).

Date: October 5, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
By: ROYLENE A. CHAMPEAUX
Assistant United States Attorney
Attorney ID Number 154805
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5685

Attorneys for the United States
of America, IRS

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13

JEFFREY M. HART and
RHONDA S. HART,

Case Number: 04-44269

Debtors.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

I, Muriel Holland, employed by the Office of the United States Attorney, with office address 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, declares that on October 5, 2004, I served the Objections of the United States of America to Confirmation of Debtors' Chapter 13 Plan and Motion To Dismiss, Memorandum in Support of Objections and Motion to Dismiss and proposed Order on the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Jeffrey Michael Bruzek, Esq.
Prescott & Pearson
443 Old Highway 8, Suite 208
New Brighton, MN 55112

Adam J. Bass, Esq.
Buchalter, Nemer, Fields
& Younger
18400 Von Karman Ave., Ste 800
Irvine, CA 92612

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

CLX Systems/Westwood Mgmt.
P. O. Box 125
Medina, MN 55340-9625

Jasmine Z. Keller, Esq.
Chapter 13 Trustee
12 South 6th Street, Ste. 310
Minneapolis, MN 55402

Hutchinson Area Health Care
1095 Hwy. 155
Hutchinson, MN 55350

Jeffrey M. & Rhonda S. Hart
707 Shady Ridge Rd.
Hutchinson, Minnesota 55350

Minnesota Department of Revenue
Collection Enforcement Unit
551 Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

Ford Motor Credit Company
3600 Minnesota Dr., Ste 750
Minneapolis, MN 55435

Craig Anderson
Assistant Attorney General
Office of MN Attorney General
Tax Litigation Division
1100 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2128

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

Executed: October 5, 2004

Signed: /e/ Muriel Holland
Muriel Holland

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:)
) Chapter 13
JEFFREY M. HART and)
RHONDA S. HART,) Case No. BKY 04-44269
)
Debtors.)

ORDER

At Minneapolis, Minnesota, this _____ day of _____,
2004.

This matter came before the Court for hearing on Confirmation of the debtors' Modified Chapter 13 Plan dated September 8, 2004. The United States of America, on behalf of the Internal Revenue Service, filed objections to confirmation and requested an Order denying confirmation and for an Order dismissing this case. Roylene A. Champeaux, Assistant United States Attorney, appeared on behalf of the United States. Other appearances were noted on the record.

It appears to the satisfaction of the Court that the debtors' Plan is not confirmable.

IT IS THEREFORE ORDERED:

1. Confirmation is denied.
2. The case is dismissed.

ROBERT J. KRESSEL
United States Bankruptcy Judge