

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

NOTICE OF MOTION AND MOTION  
FOR DISMISSAL OR CONVERSION

M. Lawrence Sofie,

Case No. 03-30999  
Chapter 13

Debtor.

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TO: Debtor(s), Debtor(s) Attorney, the other parties entitled to notice, if any, under Local Rule 9013-3, and the United States Trustee.

1. Jasmine Z. Keller, Chapter 13 Trustee, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m. on **September 23, 2004**, in U.S. Bankruptcy Court, Courtroom 228B, Second Floor, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 20, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 14, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). ***UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.***

4. The Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. §1307 and Bankruptcy Rule 1017. This motion is filed under Bankruptcy Rule 9013 and Local Rule 9013-1 *et seq.* The petition commencing this Chapter 13 case was filed on February 12, 2003. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, an employee of the Chapter 13 Trustee, 310 Plymouth Building, Minneapolis, Minnesota, will testify on behalf of the movant.

6. Movant requests that this case be dismissed for two reasons: (1) the Debtor has failed to make certain plan payments resulting in a default; and (2) the modified plan filed by the Debtor on March 24, 2004, includes Ramsey County's claim

of \$57,907.63 in ¶ 6 and adds 8% interest to the claim. In order to pay the Ramsey County claim pursuant to the plan, the term of the plan must extend to 65 months, exceeding the 60 month term mandated by 11 U.S.C. 1322(d).

7. Debtor failed to make first or subsequent payments to the Trustee thereby creating defaults or arrearages on plan payments of \$1,900.00 as of September 2, 2004. The last payment received and posted in this case was credited on July 19, 2004. Total payments of \$10,800.00 have been made to date hereof. Required monthly payments are \$1,450.00.

8. The following claim(s) have been filed:

<u>Claimant</u>	<u>Claim Amount</u>	<u>Claim Type</u>
Ian Traquair Ball	\$1,250.00	Attorney Fees
Ian Traquair Ball	\$225.00	Post Pet. Atty. Fees
Ian Traquair Ball	\$225.00	Post Pet. Atty. Fees
IRS	\$4,815.68	Priority
DaimlerChrysler	\$10,545.00	Other Secured
Ramsey County	\$57,907.63	Property Tax
<b>TOTAL</b>	<b>\$74,968.31</b>	

These claim(s) will be collectively referred to hereafter as the “Claim(s)”.

9. The Debtor’s confirmed plan contains the following specific provisions for the Claim(s):

<u>Claimant</u>	<u>Plan’s Estimated Claim Amount</u>	<u>Claim Type</u>
Ian Traquair Ball	\$1,700.00	Attorney Fees
IRS	\$4,815.00	Priority
DaimlerChrysler	\$10,545.00	Other Secured
Ramsey County	\$62,357.00	Property Tax
<b>TOTAL</b>	<b>\$79,417.00</b>	

10. The Claim(s) either have not been objected to and therefore are deemed allowed under Section 502(a), or have been allowed after objection and hearing.

11. The general language of the plan provides that the secured claims shall be paid the amounts set forth in the plan and the priority claims shall be paid in the amount of the allowed proof of claim.

12. There is no indication that the Debtor will be able to increase payments to the Trustee to pay all allowed claims in the amount required to obtain a discharge under Section 1328 of the Bankruptcy Code.

13. As a result of the foregoing, the plan is no longer feasible.

14. The creditors, if any, of a class lower in priority than the class of the Claim(s) may never receive the distribution contemplated under the plan.

15. As a further result of the present circumstances, the lower priority creditors, if any, will be delayed from the collection of their claims during the pendency of this Chapter 13 case.

16. The effect of these circumstances is that the lower priority creditors, if any, will have detrimentally relied upon the confirmed plan with the expectation of future payment, only to discover at the end of the plan term that they will receive no payment.

17. All of these circumstances constitute cause for dismissal under Section 1307(c).

WHEREFORE, the Movant requests entry of an order dismissing this case, or converting this case to a case under Chapter 7, and for such other relief as the Court deems just and proper.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: September 2, 2004

/e/ Margaret H. Culp  
Thomas E. Johnson, #52000  
Margaret H. Culp, #180609  
Chapter 13 General Counsel  
310 Plymouth Building  
Minneapolis, MN 55402  
(612) 338-7591

#### VERIFICATION

I, Lora Meier, for Movant, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 2, 2004

/e/ Lora Meier  
Lora Meier

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

M. Lawrence Sofie,

Case No. 03-30999

Chapter 13

Debtor.

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Lora Meier, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 2, 2004, I served Notice of Hearing and Motion for Dismissal or Conversion on the individual(s) listed below, in the manner described:

**By e-mail:**

United States Trustee  
1015 United States Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

**By first class U.S. mail, postage prepaid:**

M. Lawrence Sofie  
377 Jay Way  
Vadnais Heights, MN 55127

Ian Traquair Ball, Esq.  
12 S. 6<sup>th</sup> Street, Suite 326  
Minneapolis, MN 55402

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

Executed: September 2, 2004

/e/ Lora Meier  
Lora Meier