

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re:

ABED AMRO,
Debtor.

Case No. 03-30947whb
Chapter 7

ALLIED BUSINESS BROKERS, INC.,
Plaintiff,

v.

Adv. Proc. No. 03-1189

ABED AMRO,
Defendant.

MEMORANDUM OPINION AND ORDER
ON COMPLAINT OBJECTING TO DISCHARGE

The plaintiff, Allied Business Brokers, Inc. (“Allied”) filed its complaint objecting to the general discharge of Abed Amro, the Debtor in this chapter 7 case (“Debtor”). The grounds alleged in the complaint were that the Debtor failed to keep books and records from which his financial transactions may be ascertained, that he failed to include substantial property in his bankruptcy schedules, and that he failed to explain a discrepancy between his reported income and “undisclosed income” used to purchase a home. Although the complaint did not reference Bankruptcy Code

sections, these allegations closely track the language of § 727(a)(2), (3), and (5). Any one sub-section establishes a ground to deny general discharge, and since the Court has determined that the proof clearly establishes that the Debtor failed to maintain books and records of his personal and business financial transactions, the Debtor's general discharge must be denied under § 727(a)(3). As a result, only the proof under that sub-section will be discussed in this opinion, which contains the Court's findings of fact and conclusions of law.

SUMMARY OF FACTS

Allied has been pursuing the Debtor for approximately ten years on a debt that arose from an alleged contract breach. Although the Debtor would like to dispute the validity of the debt, it is not possible or appropriate for this Court to re-evaluate the validity of the debt or its amount. Allied holds a pre-bankruptcy judgment from the Tennessee courts, and this Court may only determine if the Debtor is entitled to discharge this and other pre-bankruptcy debts.

Based upon the proof presented, including the testimony of the Debtor, it is clear that the Debtor, a native of Yemen, is looked upon in his ethnic community as the "person to go to" for business advice and assistance. The Debtor has been involved in numerous business and property transactions, including providing assistance in the purchase and sale of businesses for his acquaintances. He "consults" with Yemeni people, helping such people who often don't speak English. Although the Debtor denied holding an interest in other person's businesses, he has earned commissions for some transactions, including earning \$30,000 in one commission in 2003 that was paid in cash. He continues to provide business consulting services after filing bankruptcy, stating that he did "a lot" in 2004. The Debtor's typical financial dealings are in cash, and he maintains no business records at all. The Debtor admitted that he kept no records of his consulting business activity, and there is no indication of records kept on any financial activity, other than some banking records on his spouse's bank accounts.

Although the Debtor's spouse has banking accounts, the Debtor was unable to explain how much of his earnings went into his spouse's accounts. He admitted that in 2002, for example, his wife deposited much more into her account than she earned individually. In the month following his bankruptcy filing, there was \$23,000 deposited into his wife's account, with no records to support the source of that income. He testified that he and other family members commingled their incomes into family accounts, that family members assisted each other financially and that they

often lived together or in houses owned by other family members.

The Debtor has conveyed real property to his spouse, again without demonstrating financial records that would permit creditors to track the financial aspects of transfers. In addition to the family's home being in his spouse's name, the Debtor conveyed a business property on Parkway to his wife. The mortgage debt on those properties is current, and, without business records it is impossible to determine whether the transfers to the spouse and the continuing rental income from the Parkway property were appropriate.

The Debtor's spouse, or other family members, pay some of his bills, including the home mortgage for the Debtor's family. At least one of the Debtor's minor children attends a private school. The family lives in a home with a market value of \$200,000. As observed previously, a mortgage on the home is being paid. Again, without financial records, creditors and the Court can not determine the Debtor's income or how it is used.

The lack of business records prevents the creditors of the Debtor from having a reliable means for investigating his activities. This is made worse by the Debtor's failure to otherwise provide details about his business activity. For example, the Debtor admitted that he helped sell a grocery store on Airways Boulevard in Memphis just three weeks before this trial but he couldn't testify about the address of that store. He made a \$6,000 commission for this work. Although this was a post-petition transaction, it illustrates the frustration for creditors who lack reliable information about the Debtor's pre-bankruptcy transactions.

CONCLUSION OF LAW

Although the Debtor's "defense" to his failure to maintain any records is that his "community" regularly does business without records, that is no defense to the Bankruptcy Code's requirement that maintenance of adequate business records is a prerequisite to obtaining a bankruptcy discharge. Section 727(a)(3) provides that the Court shall not give the Debtor a general discharge of debt if "the debtor has ...failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case."

The latter part of this subsection gives the trial court some discretion to decide whether the failure to have financial records is justifiable under the particular circumstances of the case. Where,

for example, a chapter 7 debtor is not engaged in any business activity, it may be understandable why few, if any, records are kept. *See Pilot Point Nat'l Bank v. Redfearn (In re Redfearn)*, 29 B.R. 739, 740 - 41 (E.D. Tex. 1983)(The debtor was not a sophisticated businessman and was therefore not under the same duty to maintain business records in a manner in which a mercantile or manufacturing businessman might be.). But, where a chapter 7 debtor is engaged in business activity that is the source of substantial income, or where the debtor has been engaged in transferring property to family members, it is obvious that such a debtor is expected to have some financial records. *Union Planters Bank, N.A. v. Connors*, 283 F.3d 896, 899 - 900 (7th Cir. 2002)(Where debtors are sophisticated in a business involving significant assets, creditors have an expectation of greater and better record keeping.). The Sixth Circuit has applied § 727(a)(3) in a stringent manner. *See Dolin v. Northern Petrochemical Co. (In re Dolin)*, 799 F.2d 251 (6th Cir. 1986), holding that a debtor's chemical dependency and gambling addiction did not excuse the debtor's failure to keep financial records. Here, Mr. Amro admits to having no records and to a pattern of dealing in cash. His failure to keep records is not justified. That failure is compounded by his transfers to his spouse and by a pattern of commingling his income with that of other family members.

ORDER

Based upon the facts in this specific case, the Court concludes that the Debtor's failure to keep financial records is not justified and that the lack of records requires the Court to deny the Debtor's general discharge. The Clerk shall enter a judgment on this Order.

The Clerk shall notice all creditors of the denial of general discharge. This specific opinion and order shall be noticed to the following:

Debtor
Debtor's attorney
Allied's attorney
Chapter 7 trustee
U.S. Trustee