

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

DANIEL R. NEU
KAREN M. NEU

Case No. 91-14189 K

Debtors

MEMORANDUM OF DECISION

The Objection to Confirmation filed by Bank of New York (Delaware) sets forth two grounds: disposable income, and "good faith."

The first is rejected because although the debtors have surrendered their house, they are paying \$300 per month in rent.

As to the second, the Court would normally set the matter over for hearing despite the objector's non-appearance at the § 341 meeting and confirmation hearing, particularly where (as here) the objector's counsel is not local. However, at the confirmation hearing the debtors testified that the cash advances were for payment of other debts, that at the time of the advances they had no intention of filing under the Bankruptcy Code, and that the only reason they did not make any payments on the Bank of New York account in the interim is because they received no bill. I also observed that the debtors had other significant debt.

Despite the objector's lack of opportunity to cross-examine the debtors on these matters or to introduce other evidence, it is the Court's view that setting the Objection for hearing would impose an additional expense upon all parties, which

expense the objector might not have elected to undertake had it been present to hear the debtors' explanations.

Thus the Objection is denied and an Order of Confirmation may be submitted, without prejudice to the right of Bank of New York (Delaware) to seek reconsideration of this disposition within 10 days of the date of this Order.

SO ORDERED.

Dated: Buffalo, New York
January 29, 1992

/S/ MICHAEL J. KAPLAN
U.S.B.J.