

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re

MARK J. HESS

Case No. 92-10688 K

Debtor

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This case presents the question of how to determine the value of a note and third mortgage (as to which a Chapter 13 debtor is the mortgagee/obligee) for purposes of 11 U.S.C. § 1325(a)(4) which requires that Creditors receive no less than they would receive in a Chapter 7 liquidation.

There is a \$15,890.10 balance due on the note. Monthly payments are \$554.02. The last payment will be due October 1, 1995. On October 21, 1992 the debtor testified as to his unsuccessful efforts to sell the note and security; persons in the mortgage business told him what he might get for the asset if an interested buyer were found, and this was the basis for the \$5000 valuation he has placed on this asset. The objector presented an expert mortgage broker who attested that he could market the asset for \$10,000 to \$14,000 within 60 days.

The objector further points out that in the eight months since the filing of this debtor's petition<sup>1</sup> the note had yielded

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<sup>1</sup>This case began in Chapter 7 wherein the debtor valued the note at zero. When challenged in that regard by the Chapter 7 Trustee, the debtor converted to Chapter 13 and amended to claim a value of \$5,000. The objector to this Plan is the Chapter 7 Trustee. To the extent that the debtor's submissions appear to challenge the Chapter 7 Trustee's standing; that challenge is

more in gross receipts than the \$5000 valuation placed on it by the debtor, further undermining the debtor's bare "estimate" of a \$5000 value.

The valuation standard for § 1325(a)(4) purposes is clear -- it is "liquidation value." The matter turns upon the proofs. The Court finds that the debtor's efforts at valuing the note and mortgage were inexpert and self-serving, deserving of no weight.

Based upon the proof provided by the objector's expert, the Court finds that the asset has a liquidation value of \$12,000, less 10% costs of sale, or \$10,800.

The Objection to the Plan is sustained. Confirmation is denied without prejudice to the modification of the Plan, within 30 days, to meet the requirement of § 1325(a)(4) based upon such value. Such Modified Plan might be subject to later further amendment if the note should fall into material default thereafter during the life of the Plan.

Dated: Buffalo, New York  
November 17, 1992



U.S. B.J.

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rejected. He may assert a claim for commissions or fees earned in Chapter 7. As such he has the standing of an administrative expense claimant.