

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

JOAN J. SISTO

Case No. 96-15986 K

Debtor

The Chapter 13 Trustee here believes that the Debtor should be required to raise the percentage to unsecured creditors because after she obtained the benefit of the fact that the filed claims came in much less than she thought, dramatically shortening her plan, she unilaterally reduced her payments, thereby stretching the plan out again, presumably for her own convenience. The Trustee argues that she thus did an end-run around the disposable income test.

The Trustee's request is denied. To the extent that the request purportedly focuses-in only on the Debtor's unilateral reduction of payments in supposed violation of the disposable income test, the Court is reluctant to distinguish this case from among the many many cases that are not completed in a timely fashion because of unilateral cessation, rather than reduction, of payments. Dozens of Chapter 13 debtors each month are in default of their payment schedules, having spent the money in some other fashion. So long as they ultimately complete the plan in less than 60 months, we do not usually investigate whether the failure to make a payment was for good reason, and insist on an increase in percentage for lack thereof.

To complain of a debtor who apparently admits that she made smaller payments for her own comfort and convenience, while accepting at face value the self-serving statements of debtors who claim some justification for having made no payment at all, is not even-handed

and risks pushing bad debtor practices further underground.

To the extent, if any, that the Trustee's complaint implicates the policy consequences of a fixed-percentage versus fixed-payment plan, this would have to be addressed on a system-wide basis, and with ample forewarning.

The Court would support and welcome broad scale initiatives to insure fair treatment of creditors when debtors might be taking liberties with regard to timely completion of payments, and might also support a shift to fixed-payment plans. But to grant the Motion here would constitute a trap as to one easy target while doing nothing about the harder ones.

The Motion is denied.

SO ORDERED.

Dated: Buffalo, New York
June 23, 1999

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.