

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 98-14601
Chapter 13

MARY GREEN HARTMAN

Debtor

MEMORANDUM AND ORDER

The debtor, Mary Green Hartman, has filed a motion for discharge under Bankruptcy Code § 1328(b), which provides:

At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if —

(1) the debtor's failure to complete payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C. § 1328(b).

The debtor fails to meet the requirement of having a confirmed plan. Indeed, the court has denied confirmation of the debtor's proposed plan. The debtor attempts to overcome this fact by asserting that the court's order allowing a sale of her property and directing payment of the equity to the Chapter 13 Trustee was confirmation of a plan as a matter of law.

The debtor may be allowed to sell property of the bankruptcy estate, even if a confirmed plan does not provide for it, by following the procedures for sale set out in the code and rules. 11 U.S.C. §§ 1303 & 363; *Fed. R. Bankr. P.* 6004; 1 Keith M. Lundin, *Chapter 13 Bankruptcy* § 3.38; *Rishel v. Rishel*, 166 B.R. 276 (Bankr. W. D. Pa. 1994); see also *Stephens v. McClung Industries*, 789 F.2d 386 (6th Cir 1986) (Chapter 11). The debtor filed a motion to be allowed to sell the property and a modified motion. The court granted the modified motion.

The debtor relies on Bankruptcy Code § 1325(c) for her argument that this amounted to confirmation of a plan. Section 1325(c) provides that the court "after confirmation of a plan" may order any entity from whom the debtor receives income to pay all or part of such income to the Chapter 13 Trustee. 11 U.S.C. § 1325(c). The debtor reasons that the order directed the payment of income to the Chapter 13 trustee, and therefore, it must have come after confirmation of a plan, which means the order amounted to confirmation of a plan.

The sale was proposed by the debtor and allowed by the court before confirmation of a Chapter 13 plan. Without a confirmed plan, the court and the Chapter

13 Trustee had no guidance as to what should be done with the money left over after payment of the secured debts and sale costs. The money was property of the bankruptcy estate that might be used to pay unsecured claims pursuant to a confirmed plan. 11 U.S.C. § 541(a)(1), (6) & § 1306. Thus, it was necessary to preserve the money until there was a confirmed plan that would determine its disposition. The court's order did not amount to confirmation of a plan. Indeed, the order to pay the money to the trustee was based on the lack of a confirmed plan. The court had the authority to order the money paid to the Chapter 13 Trustee without relying on § 1325(c). 11 U.S.C. §§ 343, 541 & 105; see *also* 11 U.S.C. § 549. Accordingly,

It is ORDERED that the debtor's motion or request for discharge is DENIED, and the hearing scheduled by the debtor for October 21, 1999, is canceled.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

entered Oct. 14, 1999

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

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Debtor

ORDER

The debtor has filed a motion for an extension of the time to file a notice of appeal from the court's order of September 21, 1999, that denied a motion to alter or amend an earlier order. The debtor requests an extension of time on the ground that she has filed a request for a discharge and the grant of a discharge may make an appeal unnecessary. The court has denied the request for a discharge. Accordingly,

It is ORDERED that the motion for an extension of time to file a notice of appeal is DENIED.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

entered Oct. 14, 1999