

**United States Bankruptcy Court
District of New Mexico**

Document Verification

Case Title: Faye Janzad
Case Number: 02-13002
Chapter : 13
Judge Code: SA
First Meeting Location: Albuquerque
Reference Number: 13 - 02-13002 - SA

Document Information		
Number:	111	
Description:	Memorandum Opinion on Trustee's Motion to Dismiss; re: [26-1] Motion To Dismiss Bankruptcy for lack of eligibility by Kelley L. Skehen, [87-1] Motion To Dismiss Bankruptcy for failure to make timely pymts to Trustee by Kelley L. Skehen.	
Size:	6 pages (16k)	
Date Received:	07/30/2003 01:33:18 PM	Date Filed: 07/30/2003 Date Entered On Docket: 08/05/2003
Court Digital Signature		
		View History
a7 93 35 d8 88 be b1 59 62 5a 81 3a 49 59 73 e0 eb a7 13 ce 5c 2e ea a1 5f 6d dc ec 79 9c 46 31 46 cd 91 f6 37 b7 67 d0 a8 0f d4 81 47 c5 ca 54 a4 9d 2f c1 ae 8c 07 c5 80 c5 f0 d1 09 e6 60 d3 c9 4b 75 ef 19 10 18 cc 22 53 85 a2 95 09 87 af 76 ac b0 3f 3d f8 97 94 12 4f 72 9c 36 1b 58 d3 4c d6 d3 ac 3c 62 4f f5 e5 c5 c3 bc ed c6 ce ba d7 9b 90 1f 16 ca 06 0d 06 51 54 3e 5e a6 3a 92		
Filer Information		
Submitted By:	James E Burke	
Comments:	Memorandum Opinion on Trustee's Motion to Dismiss under Section 109(e)	

Digital Signature: The Court's digital signature is a verifiable mathematical computation unique to this document and the Court's private encryption key. This signature assures that any change to the document can be detected.

Verification: This form is verification of the status of the document identified above as of *Wednesday, December 22, 2004*. If this form is attached to the document identified above, it serves as an endorsed copy of the document.

Note: Any date shown above is current as of the date of this verification. Users are urged to review the official court docket for a specific event to confirm information, such as entered on docket date for purposes of appeal. Any element of information on this form, except for the digital signature and the received date, is subject to change as changes may be entered on the Court's official docket.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
FAYE JANZAD,
Debtor.

No. 13-02-13002 SA

**MEMORANDUM OPINION ON TRUSTEE'S
MOTION TO DISMISS UNDER § 109(e)**

This matter came before the Court for trial on Trustee's Motion to Dismiss under § 109(e) (doc. 26), in which the Trustee claims that Debtor's noncontingent, liquidated, unsecured debts exceed the statutory limit of \$290,525. The Trustee's Motion was joined in by the following creditors: Virginia Cordova (doc. 33), Doris Ocker (doc. 34), Richard Becka (doc. 35), James Purdy (doc. 36), Yvonne Martinez (doc. 42), and Vivian Armenta (doc. 51). Debtor objected to dismissal (doc. 30). The Debtor filed a brief in support of eligibility (doc. 63) and a supplement (doc. 103). Virginia Cordova and the Trustee filed briefs (docs. 102 and 104 respectively). Supplemental written testimony was requested by the Court, and filed by the Debtor (doc. 98), and creditors Virginia Cordova (doc. 84) and Mary Sanchez (doc. 86). The Court has reviewed the file, the proofs of claim filed in the case and the testimony presented, and now issues this Memorandum Opinion finding that the Trustee's Motion is well

taken and should be granted. This is a core proceeding. 28
U.S.C. § 157(b)(2)(A).

DISCUSSION

1. Bankruptcy Code section 109(e) provides:

Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$250,000 [\$290,525¹] and noncontingent, liquidated, secured debts of less than \$750,000 [\$871,550], or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$250,000 [\$290,525] and noncontingent, liquidated, secured debts of less than \$750,000 [\$871,550] may be a debtor under chapter 13 of this title.

2. Section 109(e) includes disputed claims in the eligibility computation. In re Drovdal, No. 13-99-11106 SA, slip op. at 11 (Bankr. D. N.M. July 14, 2000)(citing Matter of Knight, 55 F.3d 231, 234 (7th Cir. 1995)).

3. The unsecured portion of a secured claim is counted as an unsecured debt for section 109(e) eligibility. Miller v. United States Farmers Home Admin., 907 F.2d 80, 82 (8th Cir. 1990) (noting that this is the majority rule).

4. Debtor admits that she has non-contingent liquidated unsecured claims for which proofs of claim were filed in the

¹The bracketed numbers are the current limits. See 11 U.S.C. § 104(b)(1) (providing for adjustment of § 109(e) debt limits every three years.)

total amount of \$250,745.18. See Submission of Written Testimony of Debtor, doc. 98, ¶ 37.

5. Proof of claim 5, of Bank of America, is filed as a "secured" claim in the amount of \$51,506.52, secured by 5709 Teakwood Trail NE, Albuquerque, New Mexico. Debtor's schedule A does not list this property. Therefore, Bank of America's secured claim is totally unsecured as to Debtor. See 11 U.S.C. § 506(a)(providing that a claim secured by a lien on property is secured only to the extent "of the value of [the] creditor's interest in the estate's interest in [the] property.")

6. Proof of claim 10, also of Bank of America, is filed as a "secured" claim in the amount of \$24,364.58, secured by general intangibles, accounts, instruments, notes, etc. Debtor's schedule B does not list any such property. Therefore, Bank of America's secured claim is totally unsecured as to Debtor. See Id.

7. Proof of claim 11, filed by Doris Ocker, is filed as a "secured" claim in the amount of \$47,000.00, secured by a mortgage from Kevin and Tara Roberts on 5709 Teakwood Trail NE, Albuquerque, New Mexico. Debtor does not list this property on her schedule A and does not list a seller's interest in any mortgage from the Roberts on her schedule B.

Therefore, Doris Ocker's secured claim is totally unsecured as to Debtor. See Id. Debtor also objects to this claim as being disputed. See Submission of Written Testimony of Debtor, doc. 98, ¶¶ 18-21. The Court finds that Doris Ocker holds a disputed unsecured claim that counts toward the 109(e) limits.

8. Debtor objects to proof of claim 2, filed by Mary N. Sanchez in the amount of \$64,000 plus punitive damages. Debtor claims that the note attached to the claim is from HighPointe Care, signed by Debtor as "Agent", and that Debtor did not sign a personal guarantee for the note. See Id. ¶¶ 8-12. Mary N. Sanchez alleges that the loan was made as a result of fraudulent statements by the Debtor and that Debtor made personal guarantees with regard to the payment of the note. See Supplemental Proposed Written Testimony of Creditor Mary Sanchez, doc. 86, ¶¶ 1-8. Debtor's denial of the personal guaranty merely makes the debt disputed as to her personally. The Court finds that Mary Sanchez holds a disputed claim in the amount of \$64,000 that is counted in the eligibility computation, and a disputed unliquidated claim for any punitive damages which would not be counted.

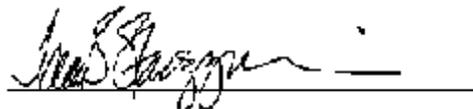
9. Debtor similarly objects to inclusion of claims 7 (Yvonne Martinez, \$20,000), 12 (Virginia Cordova, \$47,000), and 21

(Robert and Vivian Armenta, \$15,512.61) on the grounds that the debtor does not owe the amounts claimed. The Court finds that these are disputed debts that should be included in the calculation.

10. Debtor claims that Richard & Kay Becka's proof of claim number 16 should be disallowed because it was discharged in debtor's ex-husband's chapter 7 case (Supplement to Debtor's Brief on Eligibility, doc. 103). The preceding findings moot the need to address this objection.

11. The Debtor's unsecured non-contingent, liquidated debts substantially exceed the limit of \$290,525 for unsecured debt in effect on the date of the filing of the petition. Debtor is ineligible for Chapter 13 relief.

12. The Court will enter an Order giving the Debtor the choice of converting this case to a chapter for which she is eligible, and dismissing the case if Debtor fails to convert.

A handwritten signature in black ink, appearing to read "James S. Starzynski", is written over a horizontal line.

Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on July 30, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

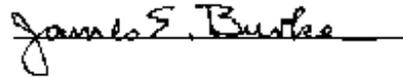
Chris W Pierce
PO Box 6
Albuquerque, NM 87103-0006

Karen H Bradley
PO Box 3509
Albuquerque, NM 87190-3509

Darryl W Millet
6605 Uptown Blvd NE Ste 390
Albuquerque, NM 87110-4293

Kelley L. Skehen
625 Silver Avenue SW
Suite 350
Albuquerque, NM 87102-3111

Lori L Millet
6605 Uptown Blvd NE Ste 390
Albuquerque, NM 87110-4293



Randal W Roberts
8102 Menaul Blvd NE
Albuquerque, NM 87110-4667

Rodney L Schlagel
PO Box 3170
Albuquerque, NM 87190-3170

Stephen J Rhoades
6400 Uptown Blvd NE Ste 550E
Albuquerque, NM 87110-4226

Stevan Schoen
3908 Carlisle Blvd NE
Albuquerque, NM 87107-4504

Rachael J Zepeda
Special Assistant US
Attorney
210 E Earll MS 2200 PX
Phoenix, AZ 85012-2626

Narciso Garcia, Jr
2033 San Mateo Blvd NE
Albuquerque, NM 87110-5147

Thomas L Kalm
8617 Las Camas NE
Albuquerque, NM 87111-2342