

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

Document Verification

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Case Number: 97-01253
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

Matthew James Huffman and
Jesse Lynn Huffman

Case 7-97-15591 RA

Albuquerque Veteran's
Administration FCU et al.

v.

Jesse Lynn Huffman et al.

Adversary 97-01253 S

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came before the Court for trial on the merits of Plaintiff's complaint to bar discharge under Section 727 and to determine dischargeability of debt under Section 523(a)(2) of the bankruptcy code. Plaintiff appeared through its attorney Kevin Hammar. Defendants appeared through their attorney Steve Turpen. This is a core proceeding, 28 U.S.C. § 157(b)(2)(I) and (J).

Facts

1. On or about December 12, 1995, Jesse Huffman completed and submitted a loan application to Plaintiff. The very first item on the application is a box checked that has the following statement: "You live in a community property state ... You are relying on your Spouse/Co-Applicant's income as a source of repayment." The loan application listed six creditors, one of which was Plaintiff, one was JC Penney (with a zero balance), and one was CampFire Inc. for child

- care (also with a zero balance). (Exhibit 1).
2. Although both Jesse Huffman's and LaVern Huffman's signatures appear on the application, Jesse Huffman admits that she signed her husband's name for him. His "signature" was markedly different from her signature. Jesse Huffman did not explain satisfactorily why she disguised the signature. Plaintiff's representative, Sharon Clark, was the loan officer for this loan. She testified credibly that she was not aware that the signature was not in fact the husband's and had no reason to even expect that it might not be.
 3. On or about December 19, 1995, Jesse Huffman signed a statement that she understood that Plaintiff had relied on the representations in the loan application, and stated that "I have disclosed all of my assets and listed their true values, and I have disclosed all of my debts and the current balances due." (Exhibit 2).
 4. On or about November 21, 1996, Jesse Huffman completed a short form loan application with Plaintiff. Plaintiff uses this short form when an applicant has filed a full loan application within two years; the short form asks for updates and changes. Under creditors, she stated her debts were "as before." (Exhibit 3).
 5. On or about November 21, 1996, Jesse Huffman signed a

statement identical to that referenced in paragraph 2 above.
(Exhibit 4).

6. Plaintiff obtained a credit bureau report on Jesse Huffman dated November 19, 1996. Plaintiff relied on this report in extending credit. (Exhibit 7).
7. Plaintiff completed a loan worksheet on November 19, 1996 based on the credit bureau report and Jesse Huffman's application. This worksheet showed a total of monthly payments without Plaintiff's proposed loan of \$1,146.00, and a total of \$1,229.23 with the new loan. It also listed total debts of \$21,209. (Exhibit 8).
8. As a result of the November 21, 1996, application, the credit bureau report, the loan worksheet, and statement of disclosure, Plaintiff advanced \$7,500.00 to Jesse Huffman. (Exhibit 5).
9. In November, 1996, LaVern Huffman had over \$23,000 of debt which was not disclosed to plaintiff. Under New Mexico community property laws, Jesse Huffman was presumptively liable for these debts. Had plaintiff been aware of these debts, these additional debts would have factored into the loan worksheet and would have demonstrated the lack of ability to repay the proposed loan. Had plaintiff known of these debts, it would not have extended credit.
10. Jesse Huffman testified that she had told the loan officer

she didn't know all of the bills and could only give estimates of her debt. A logical inference from this statement is that all the creditors were listed but she was unsure of the exact amounts of the debts. Because she subsequently signed exhibits 2, 3, and 4, the Court will adopt this inference. This inference is a false representation because not all creditors were listed.

11. Jesse Huffman testified that she had explained to Plaintiff that the debts being listed were hers, and that the loan she was attempting to get would be her debt. Sharon Clark's testimony verified that Jesse Huffman had requested that this loan be "hers" (as opposed to a community obligation), but was told it could not be, and that Jesse Huffman made a comment that she understood.
12. Sharon Clark testified that she explained that because New Mexico was a community property state Jesse Huffman's husband's debts needed to be listed.
13. A materially false financial statement is one that includes information which is substantially inaccurate and is of the type that would affect the creditor's decision making process. First Interstate Bank of Nevada v. Greene (In re Greene), 96 B.R. 279, 283 (9th Cir. B.A.P. 1989). The financial statement submitted to Plaintiff in November, 1996 omitted over 50% of the total debt and contained a falsified

- signature. The Court finds that it was materially false.
14. The financial statement submitted to Plaintiff is a "statement in writing respecting the debtor's financial condition."
15. Plaintiff reasonably relied on the representations made by Jesse Huffman that the loan applications were true and complete. Part of plaintiff's reasonable reliance derived from its obtaining and use of the credit bureau report. See First National Bank in Albuquerque v. Zambrano (In re Zambrano), 39 B.R. 12, 13 (Bankr. D.N.M. 1984).
16. Obviously, it is always difficult to prove an intent to deceive. This intent can be inferred, however, when the totality of the circumstances depicts deceptive conduct by a debtor. Hudson Valley Water Resources, Inc. v. Boice (In re Boice), 149 B.R. 40, 47 (Bankr. S.D. N.Y. 1992). A plaintiff must, therefore, prove that the debtor made a statement knowing that it was false, or that it was made with such reckless disregard of the truth so as to be the equivalent of an intent to defraud. Id. The Court finds that plaintiff has shown, by a preponderance of the evidence¹, that Jesse Huffman published the financial statement with

¹The standard of proof for dischargeability exceptions under 11 U.S.C. § 523(a) is the ordinary preponderance of evidence standard. Grogan v. Garner, 498 U.S. 279, 291 (1991).

the intent to deceive. Factors indicating this intent are the falsified signature and the magnitude of the omissions.

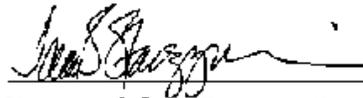
See Marx v. Reeds (In re Reeds), 145 B.R. 703, 707 (Bankr. N.D. Ok. 1992)("[I]n some instances the sheer magnitude of the misrepresentation evidences an intent to deceive.")

Jesse Huffman failed to explain by a preponderance of the evidence, or to the satisfaction of the Court, why the statement was so erroneous or why Plaintiff was not aware that her husband's signature had been falsified. At best the financial statement was prepared with a reckless disregard for the truth, given the fact that Defendant testified she was aware her husband had debts which were not listed.

17. The balance due on plaintiff's claim, as of the filing of this adversary complaint, was \$7,149. The loan calls for the payment of fees and costs of collection, and bears interest at the rate of 12.5% per year.
18. Plaintiff's debt is not dischargeable in this bankruptcy proceeding under 11 U.S.C. § 523(a)(2)(A).
19. Plaintiff has not shown by a preponderance of the evidence that omissions or material errors, if any, on the statement of financial affairs or schedules filed in this case warrant a denial of discharge. Jesse Huffman explained the claimed discrepancies to the Court's satisfaction.

20. Defendants should not be denied a discharge under 11 U.S.C. § 727.

For the foregoing reasons, the Court will enter an order (1) declaring nondischargeable the debt of \$7,149.00 plus interest at the rate of 12.5% from December 29, 1997, the date of the filing of the adversary herein, together with reasonable attorney fees and costs, (2) denying the objection to discharge, and (3) ordering plaintiff within fourteen days of the entry of the order to file an affidavit (with time sheets and cost bills attached) for the attorneys fees and costs claimed, and allowing debtor fourteen days from that filing to file objections thereto.

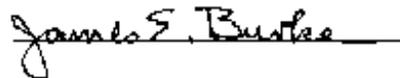


Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date file stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, mailed, or delivered to the listed counsel and parties.

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