



ENTERED
08/29/2014

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	CASE NO: 14-32964
ELAINE ANN KMIEC	§	CHAPTER 13
	§	
Debtor(s).	§	DAVID R. JONES

ORDER CONVERTING CASE
(Docket No. 22)

On August 29, 2014, the Court held a compliance hearing in Adversary No. 14-3216 as well as a status conference in Case No. 14-32964. The Court notes that on August 7, 2014, the chapter 13 trustee filed a motion to dismiss or convert this case to chapter 7 [Docket No. 22]. The Debtor has not responded to the motion. On August 28, 2014, Kara Kaufman filed an emergency motion to convert this case to chapter 7 on the grounds on fraud, animal cruelty and abuse of the bankruptcy process.

At the hearing, counsel announced that three dogs that are the subject of the Court’s preliminary injunction were returned by Ms. Kmeic to Ms. Kaufman. Ms. Kaufman testified that the three dogs were in poor condition. Ms. Kaufman produced evidence that the dogs will require significant future medical care.

Ms. Kmeic testified regarding her efforts in locating and returning the dogs. The testimony is not credible. Moreover, the act of returning the dogs calls into question Ms. Kmeic’s sworn testimony regarding her inability to comply with the Court’s temporary restraining order. The Court finds that Ms. Kmeic has violated her oath.

Moreover, the Court has spent considerable time reviewing the docket in this case. The Debtor’s schedules contain false statements. The Debtor readily acknowledges that her petition does not identify her use of an alias. Ms. Kmeic has acknowledged that she used this alias to commit fraud in a commercial transaction.

Ms. Kmeic has failed to meet the responsibilities as a debtor under 11 U.S.C. § 521. Most egregious is the fact that her actions danger the lives of 35 animals who cannot speak or protect themselves. The Court cannot condone the use of the bankruptcy process to inflict harm on undeserving creatures. Accordingly it is

ORDERED THAT:

1. This case is converted to chapter 7.
2. The Court strikes the Debtor’s Schedule C as the product of fraud. The Debtor shall file her conversion schedules (including a Schedule C) within 14 days.

3. Chapter 7 trustees are not generally equipped to provide care for living creatures. Therefore, Houston Collie Rescue and its volunteers ("HCR") are authorized and directed to remove all dogs that are located at the Debtor's claimed residence of 14234 Alice Road, Tomball, TX 77377. HCR is authorized to enter the property to remove the dogs. The Debtor shall provide access to the property. No person shall inhibit or obstruct HCR from entering onto this property and carrying out the Court's instructions. These animals shall remain in HCR's custody and control pending further order. HCR shall be entitled to an administrative claim for all costs related to the care of these animals.

4. Once the dogs are removed, HCR shall provide the chapter 7 trustee with a report identifying the number of dogs removed, their general condition and any other notable information. HCR shall also submit a proposed placement plan to the chapter 7 trustee for consideration. The Court will consider the placement plan upon written motion filed by the chapter 7 trustee.

5. The chapter 7 trustee should not seek to abandon any of the animals absent compelling cause.

SIGNED: August 29, 2014.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE