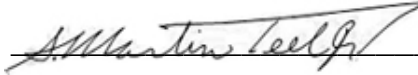


The document below is hereby signed.

Signed: March 29, 2010.



  
S. Martin Teel, Jr.  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re )  
 )  
ANTONIO ROBERSON, ) Case No. 09-00437  
 ) (Chapter 11)  
Debtor. ) Not for Publication in  
 ) West's Bankruptcy Reporter

MEMORANDUM DECISION RE MOTION TO DISMISS OR CONVERT

The United States Trustee has moved for dismissal or conversion of this case pursuant to 11 U.S.C. § 1112(b), and has established cause for dismissal or conversion under 11 U.S.C. § 1112(b)(4)(J) based on the debtor having failed to file a plan by the deadline set by 11 U.S.C. § 1121(e)(2). Cause having been established, the case must be dismissed or converted unless one of the exceptions specified by § 1112(b)(1) applies.

One exception is found in § 1112(b)(2), but § 1112(b)(2)(A) sets a requirement, in order for § 1112(b)(2) to apply, that a

plan can be confirmed within the time frame set by § 1121(e). The debtor is already past that time frame. Accordingly, the debtor may not invoke § 1112(b)(2).

Another exception, found in § 1104(a)(3), is when the court determines that the appointment of a trustee or examiner is in the best interests of creditors and the estate. The debtor has not suggested that § 1104(a)(3) applies.

Finally, § 1112(b)(1) itself permits the court to deny dismissal based on "unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate." But does this exception apply when § 1112(b)(2) has been shown to be inapplicable? The language of § 1112(b)(2) is confusing as to whether it is intended to be a limitation on the exception within § 1112(b)(1) itself, but has been interpreted as not being such a limitation, and I will assume, without deciding, that such an interpretation is correct.

Nevertheless, this case does not fit within the exception contained in § 1112(b)(1) itself. The United States Trustee declines to waive the requirement of section 1121(e) that a plan be confirmed within 300 days of the petition date. Because confirmation of a plan is barred, it is pointless to keep this case in chapter 11. Accordingly, the debtor is unable to show any unusual circumstances that establish that conversion or

dismissal is not in the best interests of creditors and the estate, and the exception in § 1112(b)(1) itself is unavailable.

The debtor does not seek to convert the case to chapter 7. Accordingly, the case will be dismissed. An order follows.

[Signed and dated above.]

Copies to: Debtor's counsel; Office of U.S. Trustee.