

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

CUMBERLAND INVESTMENT CORPORATION :
Debtor

BK No. 89-11051
Chapter 7

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ORDER

APPEARANCES:

Jason Monzack, Esq.
Chapter 7 Trustee
KIRSHENBAUM & KIRSHENBAUM
888 Reservoir Avenue
Cranston, Rhode Island 02910

Harold F. Chorney
Pro se
16 Spring Drive
Johnston, Rhode Island 02919

BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on the Trustee's motion to examine the ability of the former principal of the Debtor (Chorney) to satisfy a \$200,000 judgment rendered against him early on in this 1989 case, which with post-judgment interest, now exceeds \$400,000.

Chorney testified that he is totally disabled, that his \$3,319 monthly income consists of Social Security and Veteran's benefits, and that he needs in excess of \$3,445 per month for lodging, meals, and unspecified living expenses. \$1,100 of Chorney's monthly income goes to his companion, who owns the property where they live. Chorney testified that he is always heavily medicated, hence his inability to work. He does not include any amount for medications, health insurance, or automobile ownership/operation in his expense list. This Court's observation over a long time is that things probably will remain unchanged for Chorney and for his creditors.

In his post-hearing memorandum the Trustee urges the Court to apply the IRS standardized expense schedule adopted in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and that under that test Chorney would have \$240 per month in disposable income to pay the \$400,000 plus judgment. Chorney responds that if the Court does use that standard expense test, it should apply across the board to all expenses, giving him credit for items that actually cost him less than the standard, such as car ownership and operation. He makes a valid point, but it is not the one upon which

this ruling is based, mainly because this Court does not intend to apply the arbitrary IRS figures unless required to do so by statute or by controlling case law. We will use Chorney's actual income and expenses, versus reasonable and necessary expenses analysis to determine Chorney's ability to pay.

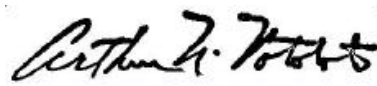
There is no evidence to suggest that Chorney's expenses are either unnecessary or inflated, and they are consistent with what we see all the time in this Court. Based on the facts as presented, and notwithstanding what the IRS has determined to be "standardized expenses," I find that Chorney is not currently able to make other than token payments. This case is now approaching its 17th anniversary and there is no reason to prolong things in hope of collecting pennies on a \$400,000 plus judgment. In connection with this bankruptcy Chorney was convicted on seven counts of making false statements to a federally insured bank, he served 27 months in prison, and was ordered to pay restitution to the FDIC in the amount of \$569,469. See *U.S. v. Chorney*, 63 F.3d 78, 80 (1st Cir. 1995). According to his sworn schedules, Chorney is paying \$200 monthly on that obligation.

Regardless of his prior consistent lack of veracity before this Court, and while he may well have concealed property both pre and shortly post-petition, the evidence before me does not support a finding that Chorney has assets or the earning capacity to make

payments at this time. Accordingly, the Trustee is ordered to discontinue collection efforts, to file his final report and accounting, and to close the case without further delay.

Because of his notorious track record, however, it is not this Court's intention to give Chorney a complete and unconditional pass herein. Therefore, he is ORDERED to file annually with the United States Trustee, verified copies of his federal and state income tax returns, and annual personal financial statements, also verified. In addition, Chorney is ORDERED to immediately report to the United States Trustee any increase in his present income, or the receipt of any money or property, whether by gift, loan, bequest, devise, lottery winnings, gambling, or by any other means. Upon receiving such notice from Chorney, or obtaining such information by any other means, Mr. Monzack and/or the United States Trustee may apply to re-open this case to pursue the collection of Chorney's debts.

Dated at Providence, Rhode Island, this 17th day of January, 2006.



Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: 1/17/2006