

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

- - - - -x
In re: :

ANTHONY SIVO : BK No. 97-15166
Debtor : Chapter 13
- - - - -x

TITLE: *In re Sivo*

CITATION:

ORDER DENYING CONFIRMATION

Heard on March 3, 1998, on confirmation of the Debtor's Chapter 13 plan. Both the Chapter 13 Trustee and Rhode Island Depositors Economic Protection Corporation (DEPCO) object to confirmation, arguing: (1) that the Debtor is not contributing all of his disposable income into the plan; and (2) that the plan is not proposed in good faith. Based on the totality of circumstances and for the reasons set forth below, the objections to confirmation are sustained.

On December 11, 1997, the Debtor filed a petition under Chapter 13, listing net household income of \$6,563 per month, which includes a deduction of \$468 per month to fund the Debtor's pension plan. See Schedule I.¹ In Schedule J, the

¹ This deduction from income is subtly concealed in the Debtor's schedules, where he merely lists a deduction of \$1,559 per month under the category "payroll taxes and social security."

Debtor lists household² expenses of \$6,313 per month, including:

(1) \$200 home maintenance; (2) \$600 food; (3) \$150 clothing; (4) \$200 transportation (not including car payments); (5) \$100 recreation; (6) \$100 charity; and (7) \$350 for his son to attend parochial high school. The Debtor proposes to pay \$200 per month into the plan, paying \$6,000 to unsecured creditors whose claims total \$133,220 - a 4.5% dividend. Additionally, the Debtor proposes to retain a \$12,000 personal injury recovery.

Disposable income, a defined term under the Code, is described as follows:

income which is received by the debtor and which is not reasonably necessary to be expended--

- (A) for the maintenance or support of the debtor or a dependent of the debtor; and
- (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

11 U.S.C. § 1325(b)(2). The "reasonably necessary" standard has been interpreted as one of adequacy, supporting "basic needs 'not related to [the debtor's] former status in society

² The family consists of the Debtor, his wife, and two minor children. See Schedule I.

or the lifestyle to which he is accustomed ...'." *In re Jones*, 55 B.R. 462, 466-67 (Bankr. D. Minn. 1985)(quoting *Warren v. Taff* (*In re Taff*), 10 B.R. 101, 107 n. 3 (Bankr. D. Conn. 1981); see also *In re Cardillo*, 170 B.R. 490, 491 (Bankr. D.N.H. 1994). "Whether a particular expense is reasonably necessary is discretionary and fact sensitive, thereby, requiring a case-by-case approach and precluding application of a single formula." *Granito v. Boyajian* (*In re Granito*), BAP No. RI 97-070, pp. 5-6 (Bankr. 1st Cir. October 7, 1997).

Although determining the boundaries of reasonableness in these cases is subjective and often difficult, this Debtor has exceeded the limits of the envelope, without question. Accordingly, we adopt and incorporate herein by reference the arguments of the Trustee and DEPCO who contend that the expenses are unreasonable and/or inflated, and that Mr. Sivo is not contributing all of his disposable income into the plan.

For a Chapter 13 plan to be confirmed, it must be proposed in good faith. See 11 U.S.C. § 1325(a)(3).³ Based on the totality

³ This section states:

- (a) Except as provided in subsection (b), the court shall confirm a plan if--
- (3) the plan has been proposed in good faith and not by any means

of circumstances, especially the nature and amounts of the Debtor's alleged expenses and the proposed retention of all of the personal injury proceeds, we find without difficulty that the plan is not proposed in good faith and order that confirmation be DENIED.⁴ See *In re Cardillo*, 170 B.R. at 492.

Dated at Providence, Rhode Island, this 23rd day
of
April, 1998.

/s/ Arthur N. Votolato

Arthur N. Votolato
U.S. Bankruptcy Judge

forbidden by law;
11 U.S.C. § 1325(a)(3).

⁴ Pursuant to R.I. LBR 3015-3(c) the Debtor has 11 days to file an amended plan or the case will automatically be dismissed.