

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re:

STEPHEN SEVERIN XAVIER AUSTRAL-
BECK

Debtor.

Case No. A06-00162-DMD
Chapter 13

Filed On
11/3/06

MEMORANDUM REGARDING CONFIRMATION

The debtor has been involved in three separate bankruptcy proceedings. The first proceeding was a chapter 13 filed February 5, 2005 and dismissed December 13, 2005. His second proceeding was a chapter 7 that was dismissed due to his failure to obtain pre-petition credit counseling. It was filed February 23, 2006 and dismissed March 13, 2006. His latest case was filed as a chapter 7 case on May 19, 2006. It converted to chapter 13 on July 27th.

In this third bankruptcy, the Alaska Commission on Postsecondary Education (“ACPE”) sought a comfort order that the stay had been terminated as to it. Under 11 U.S.C. §362(c)(3), the automatic stay terminates thirty days after the filing of a new case when the debtor had an earlier case dismissed that was pending within one year. 11 U.S.C. §362(c)(4) provides another exception to the automatic stay. If a debtor files a petition when he had two or more petitions pending within a year, that were later dismissed, the automatic stay doesn’t go into effect for even thirty days. Judge Ross found that the automatic stay had been terminated under both §362(c)(3) and §362(c)(4). He granted ACPE a comfort order regarding termination of the stay on July 7, 2006.

Given this history, this court cannot fashion any relief for the debtor at this time. ACPE has a continuing garnishment that makes it impossible for the debtor to fund a plan. The debtor will have to wait at least a year after dismissal of his current case to establish the automatic stay with yet another filing. His best course of action at this time is to seek immediate dismissal of

his current chapter 13 case. He will have to endure ACPE's continued garnishments for the foreseeable future. Chapter 13 cannot currently provide him any relief.

DATED this 3rd day of November, 2006.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: Chris Johansen, Esq.
Mary Ellen Beardsley, Esq.
Larry Compton, Trustee
U. S. Trustee

11/3/06