

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:

ALEXIS A. CALDER,

Debtor.

Case No. A09-00015-DMD
Chapter 13

**Filed On
4/29/09**

MEMORANDUM RE: DISMISSAL

The debtor filed for Chapter 13 relief on January 13, 2009. In her schedules, she listed secured debt of \$1,376,076.00. She also filed a plan calling for monthly payments of \$3,000.00 per month to the trustee. Her schedule J showed negative monthly income of nearly \$34,000.00 per month, however. The debtor has made no payments to the trustee. The trustee moved to dismiss the Chapter 13 proceeding on March 27, 2009. The trustee sought dismissal because the debtor had failed to initiate payments to the trustee and because the debtor exceeded the secured debt limitation of 11 U.S.C. § 109(e).

Creditor Lloyd "Red" Elvin opposes dismissal. He believes the debtor should file amended schedules to determine Chapter 13 eligibility or that the case should be converted to Chapter 7. Wells Fargo joins in the motion to dismiss but seeks dismissal of the case now. The trustee is willing to give the debtor another extension, through May 27, 2009 to file amended schedules and a new plan. The debtor has promised amended schedules in the past but has yet to provide them. No one has alleged that the case was a bad faith filing.

In *Scovis v. Henrichsen*¹, the Ninth Circuit stated the rule for determining Chapter 13 eligibility.

We now simply and explicitly state the rule for determining Chapter 13 eligibility under § 109(e) to be that eligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith.

Here the schedules reveal that the debtor has \$1,376,076.00 in secured debt. The maximum permitted by 11 U.S.C. § 109(e) is \$1,016,650.00. The schedules appear to have been submitted in good faith. The debtor does not qualify for Chapter 13 relief. Her petition must be dismissed now.

DATED: April 29, 2009.

BY THE COURT

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

Serve: R. Sparks, Esq.
C. Johansen, Esq.
S. Bloom, Esq.
M. Boutin, Esq.
G. Spraker, Esq.
L. Compton, Trustee
U. S. Trustee

04/29/09

¹(*In re Scovis*) 249 F.3d 975, 982 (9th. Cir. 2001)