

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK05-82135
)	
APARTMENTS AT TIMBER RIDGE, L.P.,)	
)	CH. 11
Debtor(s).)	

REPORT & RECOMMENDATION

TO: Chief District Judge Joseph F. Bataillon

Richard Wagner, the principal person in charge of the management of Apartments at Timber Ridge, L.P., an apartment complex in Omaha, Nebraska, prior to the appointment of Thomas Stalnaker as trustee, has been ordered by the undersigned to provide information to prepare, modify or revise tax returns for the debtor for the years 2004 and 2005 and to prepare and sign the year 2004 and 2005 Nebraska Investment Finance Authority reporting requirements.

Mr. Wagner has refused to obey the order. As a result, he has been found in contempt of court.

Filing No. 133 is the order finding Mr. Wagner in contempt and granting him until July 28, 2006, to purge himself of contempt by completing and signing the documents.

On July 31, 2006, counsel for the moving party, Lehman Housing Tax Credit Fund, L.P. and Lehman Tax Credit Advisor, Inc., filed a declaration informing the court that "the only documents my clients inform me they have received are signed 2004 tax returns for the Apartments at Timber Ridge, L.P., and Arbors SS, L.P., which my clients believe to be incorrect." Based upon this information, the undersigned finds that Mr. Wagner has failed to comply with the order requiring action by July 28, 2006.

Although the Bankruptcy Code, at 11 U.S.C. § 105(a), has been construed to give the bankruptcy judge civil contempt power, it is unclear whether the bankruptcy judge has the authority to issue a warrant directing the United States Marshal to take into custody a person found in contempt, but who resides in a district other than the District of Nebraska. Mr. Wagner has a business office at 8411 Preston Road, Suite 711, Dallas, Texas, 75225. Therefore, because of the possibility that the bankruptcy judge does not have such authority, I request that the Chief Judge of the United States District Court for the District of Nebraska withdraw the reference of this limited matter and exercise the judicial power of the United States to sanction Mr. Wagner for his repeated failures to obey orders of the United States Bankruptcy Court for the District of Nebraska.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules, and shall inform the Clerk of the District Court that this report & recommendation is specifically directed to the chief district judge, notwithstanding the ordinary assignment system in the district court.

DATED: September 7, 2006

RESPECTFULLY SUBMITTED:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

T. Randall Wright
Thomas D. Stalnaker
Jerry L. Jensen
Robert J. Becker
Richard M. Beheler
Kathryn J. Derr
Trenton P. Bausch
Howard T. Duncan
Michael L. Schleich
Peter F. Olberg

Michael T. Eversden
Patricia Fahey
Tanya Marie Morrison
Douglas E. Quinn
John J. Reefe
Jeffrey L. Poulson
David A. Christensen
Kirk E. Goettsch
Michael O'Bradovich