

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK04-83569
)	
ARBORS SS, 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 Arbors SS, L.P., an apartment complex in South Sioux City, 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. 159 is the order granting the motion to compel Mr. Wagner to sign the documents. When he failed to do so, another motion was filed requesting an order to compel him to do so. Hearing was held, evidence admitted, and an order entered finding him in contempt of court for failure to comply, Filing No. 174.

A motion to reconsider was filed by Mr. Wagner. Following a hearing, the motion to reconsider was denied. That order, Filing No. 178, directed the Clerk of Court to schedule a live witness hearing which Mr. Wagner was ordered to attend. The order provided that he would have an opportunity to show the court any good reason that he should not be sanctioned for his refusal to obey the order of the court. It warned Mr. Wagner that if he failed to appear, the court would use the services of the U.S. Marshal to guarantee his later appearances.

Hearing on that matter was scheduled for June 19, 2006. Mr. Wagner did not appear, although his counsel did. He was once again given an opportunity to sign all of the documents and was ordered to do so by July 28, 2006. The order, Filing No. 180, provided that "failure to do so shall result in an order that he be taken into custody by the U.S. Marshal until he complies. Compliance does not cure his failure to appear at the hearing on June 19, 2006."

On August 2, 2006, at Filing No. 182, counsel for the moving party, Lehman Housing Tax Credit Fund, L.P. and Lehman Tax Credit Advisor, Inc., filed a declaration informing the court "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 various orders.

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

Michael T. Eversden
Patricia Fahey
Tanya Marie Morrison
Douglas E. Quinn
John J. Reefer
Jeffrey L. Poulson