

been filed prior to the debtor's request for voluntary dismissal. Cooperativa indicated that it did not previously oppose the debtor's request for a voluntary dismissal because it did not receive notice of the motion.

The court granted Cooperativa five days to submit a memorandum of law in support of its position that conversion could be ordered where the debtor had filed a motion to voluntarily dismiss a Chapter 13. The court also granted the debtor five days to reply in opposition to Cooperativa's motion to vacate the dismissal and convert the case to Chapter 7.

On December 5, 1994, Cooperativa submitted its memorandum of law. Cooperativa points to many irregularities that occurred both prior to the debtor's petition in bankruptcy and post-petition. Cooperativa indicates that the debtor failed to document \$9,248.12 in payments made to unsecured creditors forty-six days prior to filing bankruptcy, with the proceeds of a loan received from Cooperativa. Cooperativa also indicates that the debtor refused to provide the opinion of value of her residence and her payment stubs regarding the alleged preferential payments. The debtor was granted forty-five days by the trustee to submit the documents and has failed to do so. Cooperativa disagreed with the opinion of value that the debtor listed in her schedules for her residence and was attempting to have an independent appraisal conducted at its expense. The debtor scheduled the residence at \$40,000 in her

bankruptcy petition, but stated in a loan application that the value of the residence was \$95,000.

The debtor has not responded to Cooperativa's motion and memorandum of law and the time granted to the debtor to oppose Cooperativa's motion has expired.

DISCUSSION

While 11 U.S.C. § 1307(b) suggests that a debtor, who has not previously converted a case, has an absolute right to receive a voluntary dismissal of a bankruptcy petition under Chapter 13, case law in recent years has served to limit a debtor's right to receive a voluntary dismissal when a motion to convert to Chapter 7 is pending or when there is evidence brought forth of the debtor's misconduct or bad faith. In In re Tatsis, 72 B.R. 908 (Bankr. W.D.N.C. 1987), the court held that the debtor's right to a voluntary dismissal was limited when a motion to convert was pending. The court ultimately determined that dismissal was not in the best interest of the creditors because it would preclude recovery of prepetition preferences. In another case, In re Powers, 48 B.R. 120 (Bankr. M.D. La. 1985), the court denied the debtor's motion for voluntary dismissal and granted a motion to convert the case to Chapter 7, where the debtor acted in bad faith to omit assets from his schedules and grossly undervalued his federal income tax refund. This court finds persuasive the line of cases which limit the debtor's right to obtain a voluntary

dismissal when a motion to convert is pending.

In the present case the motion to convert was pending prior to the debtor's request for a voluntary dismissal. Moreover, there have been serious allegations of misconduct by the debtor. The debtor has failed to refute the allegations or otherwise respond to Cooperativa's motion to convert to Chapter 7 and Cooperativa's oral request at the confirmation hearing to vacate the dismissal and convert to Chapter 7. There are allegations of prepetition preferences in this case and they are not recoverable outside of bankruptcy.

The trustee's report on confirmation indicates that the liquidation value of the estate is higher than what the debtor proposed to pay under her plan. The debtor proposed to pay \$11,244 in her plan. After payment of \$900 in attorney fees and payment of trustees fees, the debtor proposed a pro rata distribution of the remainder of the base toward her unsecured debts scheduled at \$26,865.62. The debtor's schedules indicate that she is insolvent with assets of \$55,538 and total liabilities of \$71,804.20. The court finds that an orderly liquidation of the debtor's assets would be in the best interests of the creditors.

For the forgoing reasons, the court finds that the voluntary dismissal granted in this case should be vacated and the case converted to Chapter 7.

ORDER

This court's order of November 18, 1994, granting the debtor's request for a voluntary dismissal is vacated and set-aside. The debtor's motion requesting a voluntary dismissal is denied. Cooperativa's motion to convert the case to Chapter 7 for cause pursuant to 11 U.S.C. § 1307(c) is granted.

IT IS SO ORDERED.

Dated at San Juan, Puerto Rico, this _____ day of January, 1995.

GERARDO A. CARLO
U. S. Bankruptcy Judge