

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

IN RE: MICHAEL STOYANOV, Debtor

**No. 6:15-bk-70864
Ch. 13**

ORDER

Before the Court is *Talk-A-Lot, Inc.*'s *Motion to Dismiss the Debtor's Chapter 13 Case* filed on June 11, 2015. Talk-A-Lot argues that because the debtor no longer receives income from the debtor's former business—Spa City Communications—and does not receive income from his wife's bakery—Ambrosia Baking Company—where he works, or from any other source, the debtor is not eligible to be a debtor under chapter 13. The Court heard the motion on July 1, 2015, and for the reasons stated below, denies the creditor's motion.

The evidence presented to the Court at the hearing was, in part, contrary to the debtor's schedules. The debtor's Schedule I indicates that the debtor is a business owner and has been employed by Ambrosia Bakery Co. for 18 years. However, the debtor testified at trial that his interest in the bakery is a marital interest only; the bakery is owned by his wife. He also testified at trial that in March 2013 he left the bakery to start another business, Spa City Communications, which was a retail phone business. According to the debtor, he received no paycheck from the bakery during 2013 and 2014; he did state, however, that he shared in his wife's income from the bakery because her income was placed into their joint checking account. The debtor sold his phone business in November 2014 and remained unemployed until approximately February 2015 when he returned to work in the bakery.

According to the debtor's schedules, the debtor's monthly draw from the bakery is alleged to be \$1000. However, the debtor testified that he received no income from the bakery and is not on salary at the present time but was working full time at the bakery when he filed his bankruptcy petition on March 31, 2015. The debtor also testified that

he and his wife have discussed the debtor drawing between \$700 to \$1000 a week at the bakery in the future but that he was advised by his attorney simply to continue doing what he was currently doing for the present time. When asked how he can afford to make his proposed plan payments, the debtor testified that the payments are made through an automatic draft payment with his bank.

The debtor's spouse corroborated most of the debtor's testimony. She testified that since 1998, both she and the debtor drew approximate matching salaries until April 2013. In April 2013, the debtor purchased the phone business and no longer received a salary from the bakery. In November 2014, the debtor's income stopped when he sold the phone business and, according to the spouse, the debtor has had no other income since that time. Although the debtor began working in bakery again in January or February 2015, they have postponed any salary decisions for the debtor while they are determining how to structure their lives, with the assistance of their attorney. She testified that she intends to put the debtor on salary for retirement and Social Security purposes but has not done so at the present time. For now, all of her income from the bakery goes into their joint account, from which all of their bills are paid, including the debtor's proposed plan payment.

Eligibility under chapter 13 begins with 11 U.S.C. § 109(e), which states that “[o]nly an individual with regular income . . . may be a debtor under chapter 13 of this title.” An “individual with regular income” is defined as an “individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan” 11 U.S.C. § 101(30). Regular income does not refer to the type or source of the income, “‘but rather its regularity and stability.’” *In re Bottelberghe*, 253 B.R. 256, 259 (Bankr. D. Minn. 2000) (quoting *In re Sigfrid*, 161 B.R. 220, 221 (Bankr. D. Minn. 1993)). It is not necessary that the debtor's income be in the form of a regular salary or paycheck. Nondebtor spouse contributions can also constitute income of the debtor for purposes of establishing eligibility if it is shown that the income is regular and stable. *Id.* at 260-61 (citing cases); *see also Sigfrid*, 161 B.R. at 222.

In this instance, based on the testimony of the debtor and his spouse, the Court finds that the debtor's spouse has income from the bakery that is regular and stable. Her income is deposited into the debtor's and her joint bank account, out of which the debtor's proposed plan payment is automatically withdrawn every month. This finding is in accord with the trustee's broad interpretation of the term "regular income" as well. Typically, the trustee will let a debtor proceed as long as there is a regular source of income and the debtor states that he can make the monthly payment. For the reasons stated above, the Court finds that the debtor is an individual with regular income and is eligible to be a debtor under chapter 13. Accordingly, the Court denies Talk-A-Lot's motion to dismiss.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 07/06/2015

cc: Marc Honey
Scott T. Vaughn
Jack Gooding, chapter 13 trustee