

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

Case No. 9:13-06554-FMD
Chapter 13

IN RE:
Daniel L. Malinowski and Carolyn S. Malinowski

ORDER GRANTING MOTION TO DISMISS CHAPTER 13 CASE
(EFFECTIVE DATE OF THIS ORDER IS 14 DAYS FROM THE DATE OF ENTRY)

THIS CAUSE came on consideration for the purpose of the entry of an appropriate Order in the above-styled Chapter 13 Case. The Court having reviewed the record, finds that an Order Reserving ruling on Trustee's Motion to Dismiss was entered on August 28, 2013, for reason of the Debtor(s) delinquency in payments to the Trustee. By submission of this Order Dismissing the Chapter 13 case, the Trustee advises the Court that the Debtor(s) failed to comply with the Order, it is therefore

ORDERED as follows:

1. The Motion to Dismiss is granted.
2. This case be and the same is hereby DISMISSED without prejudice.
3. The Trustee shall deduct from the monies to be returned to the Debtor(s) his normal percentage thereof as necessary costs and expenses from sums collected pursuant to 11 U.S.C. §1326(a)(2), together with any fee, charge, or amount required under 28 U.S.C. § 586 (e) (2).
4. The Trustee shall first disburse all Trust Fund monies held as adequate protection and for administrative expenses, as provided for in this Court's previously entered Order Establishing Duties of Trustee and Debtor et seq., to those secured creditors provided for in the Debtor's proposed chapter 13 Plan and to administrative expense holders.
 - a. The Trustee shall disburse the Trust Fund monies to the secured creditors either in the total amount due or, in the event Trust Fund monies prove insufficient, pro rata.

These monies shall be paid pursuant to the creditor's proof of claim or, in the event a claim was not previously filed, pursuant to the terms of the proposed Plan.

b. Pursuant to the Order Establishing Duties of the Debtor, if the Debtor's attorney seeks no more in compensation than the Courts Presumptively Reasonableness Fee and additional fees as approved in the Court's Amended Order Establishing Presumptively Reasonableness Debtor's Attorney Fee in Chapter 13 Cases, Misc. Pr. 07-02, April 9, 2010, then such fee is hereby deemed to be an allowed administrative expense for purposes of entitlement to Trust Funds. The compensation to Debtor's counsel shall be paid in accordance with the Trust Funds portion of the chapter 13 plan. If a plan payment is insufficient to pay 100 percent of the plan's monthly allocation to the secured creditors and administrative expense creditors, the payment shall be prorated among all creditors having an entitlement to Trust Funds. The Debtor is/are hereby granted leave to file an objection to the allowance of these attorney fees within ten (10) days from the date of this order, if deemed advisable.

5. The Trustee shall return to the Debtor(s) any monies not previously disbursed and file his final report and upon filing of same, will be discharged of his duties as Trustee.

6. The effective date of this Order is delayed 14 days to permit the Debtor(s) to convert this case to another Chapter under the Bankruptcy Code if the Debtor(s) wish to do so.

7. All pending hearings are hereby canceled.

DONE AND ORDERED at Tampa, Florida on _____.

Caryl E. Delano
United States Bankruptcy Judge

Chapter 13 Trustee, Jon M. Waage is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

JMW/AV

C13T 9/25/13