2002 BNH 019 **Note: This is an unreported opinion. Refer to AO 1050-1 regarding citation.**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: Bk. No. 99-13695-JMD
Chapter 7

Melinda Palmer Wilson,
Debtor

J. Christopher Marshall, United States Trustee, and
Victor W. Dahar, Chapter 7 Trustee,
Plaintiffs

v. Adv. No. 01-1058-JMD

Melinda Palmer Wilson,
Defendant

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MEMORANDUM OPINION

I. INTRODUCTION

J. Christopher Marshall, United States Trustee (the "UST"), and Victor W. Dahar, Chapter 7 Trustee (the "Trustee") (collectively the "Plaintiffs"), filed a complaint seeking to revoke the Debtor's discharge under 11 U.S.C. § 727(d)(1) and (d)(2). The Plaintiffs withdrew their

727(d)(2) count and proceeded to trial on their 727(d)(1) count, in which they sought the revocation of the Debtor's discharge because they allege that she obtained it through fraud by failing to disclose with fraudulent intent significant assets and material transfers within one year of her bankruptcy filing and the Plaintiffs did not know of such fraud until after the Debtor was granted a discharge.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS AND PROCEDURAL HISTORY

The Debtor and her former spouse, Thomas Wilson ("Wilson"), were married in 1978. After the birth of the couple's first child, the Debtor became a stay-at-home mother. Wilson worked in the real estate syndication business and earned as much as $400,000.00 a year. During the course of the couple's marriage, Wilson purchased several items of jewelry and antique furniture for the Debtor. The couple also purchased several prints and paintings during their marriage.

The Debtor and Wilson separated in May 1999. Shortly thereafter Wilson was incarcerated in New York for contempt relating to a lawsuit filed in federal court in 1996. At the time the Debtor was unemployed. After Wilson's incarceration, Wilson's parents began sending money to the Debtor in order to support her and her husband's two children. Because of animosity between the Debtor and the Wilsons, the Wilsons requested that they deal directly with the

Debtor's father instead of the Debtor. Accordingly, during the summer and fall of 1999, the Wilsons sent checks directly to the Debtor's father to cover many household expenses.

While incarcerated, Wilson gave the Debtor two powers of attorney so that she could liquidate his assets. The powers of attorney were dated August 1, 1999, and August 17, 1999. Using a power of attorney, the Debtor was also able to liquidate Wilson's bank account, which held approximately $1,800.00. The Debtor was also able to sell the Debtor's pickup truck in August 1999 for $18,750.00. The Debtor gave the proceeds of the sale to her father with the understanding that he would disburse the funds at her request to cover household expenses. On September 6, 1999, the Debtor's father gave $3,850.00 of the proceeds to the Debtor's brother so that he could disburse funds to the Debtor if she needed them while the Debtor's parents were away. On September 7, 1999, the Debtor's father deposited $10,000.00 from the proceeds into his account with A.G. Edwards.

In August 1999, the Debtor also had her father consign some of her personal property with F.O. Bailey Antiquarians ("F.O. Bailey") in Maine; specifically, he consigned a set of Calyx ware, a Christophle tea set, and a Currier & Ives painting. On September 15 and 24, 1999, F.O. Bailey issued checks to the Debtor's father in the total amount of $450.00 upon the sale of a partial set of the Calyx ware. During this time, the Debtor's father also consigned an Ansel Adams print with F.O. Bailey, a print apparently owned by Wilson.

In September 1999, the Debtor and her father visited a jewelry store in order to determine the value of the Debtor's jewelry. The jeweler indicated that he would accept $500.00 for it. The Debtor opted not to sell at that price.

In September 1999, the Debtor's brother came to the Debtor's home and, at her request, removed Wilson's canoe and trailer in order to place them for sale. The Debtor's brother sold the

canoe and trailer for $650.00 in mid-October 1999. He gave the proceeds to his sister as she needed money to support herself and her two children.

Despite receiving assistance from her in-laws and receiving monies from the sale of her and her husband's assets, the Debtor still faced numerous financial difficulties, including the impending foreclosure of several parcels of real estate. In mid-September 1999 the Debtor and her father sought the advice of a bankruptcy attorney.[1] Based upon a referral from her divorce attorney, the Debtor and her father met with Attorney Lorraine Sager ("Attorney Sager"), and she gave the Debtor some financial evaluation forms to fill out. These forms sought information that was required by the bankruptcy petition, statement of financial affairs, and schedules. The Debtor completed these forms and returned with her father for a meeting with Attorney Sager sometime in November 1999. Attorney Sager and the Debtor also had a subsequent telephone conversation regarding these forms and/or the preparation of the Debtor's bankruptcy petition, statement of financial affairs, and schedules.

During the time when the Debtor was preparing to file for bankruptcy, she obtained a renter's insurance policy that provided coverage of $25,408.00 for fine arts and $28,000.00 for jewelry out of vault. The policy period ran from November 5, 1999, to November 5, 2000. The coverage apparently mirrored the homeowner's policy that had been in place for a number of years prior to the foreclosure of the Debtor's home. In addition, during this time the Debtor's father received another check dated November 19, 1999, from F.O. Bailey in the amount of $585.00. The check represented the proceeds from the sale of the Christophle tea set.

[1] Wilson, and corporations with which he was associated, had previously sought bankruptcy protection in 1997. The Debtor had not.

On November 26, 1999, the Debtor filed her Chapter 7 bankruptcy petition, her statement of financial affairs, and her schedules with the Court. Question 10 on the statement of financial affairs required the Debtor to "[l]ist all property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case." In response to this question, the Debtor listed "[n]one." Question 14 on the statement of financial affairs required the Debtor to "[l]ist all property owned by another person that the debtor holds or controls." In response to this question, the Debtor listed a 1994 Chevy Suburban automobile owned by Republic Realty Management and no other property. On Schedule B to her petition, the Debtor listed "Pictures & art objects" with a current market value of $400.00 under category 5 for "Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles," and she listed "Sapphire & diamond ring ($500)" and "Fisher fur jacket ($0)" under category 7 for "Furs and jewelry." On Schedule I, the Debtor listed her current monthly income as $442.71 and indicated that her employment was seasonal. The Debtor listed her current monthly expenses on Schedule J as totaling $7,751.00. Nowhere on her petition, statement of financial affairs, or schedules did the Debtor reference the recent sales of Wilson's truck, canoe, and trailer, the closing of his bank account, nor the sales of her Calyx ware or Christophle tea set.

After the Debtor filed her bankruptcy petition but before the first meeting of creditors, the Debtor received a check dated December 13, 1999, in the amount of $11,197.25 from the liquidation of Wilson's retirement account. The Debtor signed the check over to her father, who placed those funds in his personal account to be held for the benefit of the Debtor's and Wilson's children.

The first meeting of creditors was conducted on January 4, 2000. At that meeting, the Debtor swore under oath that she listed all her assets on her schedules. She also stated that she had not personally transferred anything in the last year or so to anyone. Following the meeting, the Trustee filed a report of no assets and a notice of intent to abandon property of the Debtor's estate. The Debtor received her discharge on March 15, 2000, and on April 6, 2000, her bankruptcy case was closed.

The Debtor continued to receive funds from the sale of assets after her bankruptcy case was closed. On May 5, 2000, F.O. Bailey issued a check in the amount of $900.00 for the Currier & Ives painting that the Debtor's father had consigned on her behalf prepetition.

In December 2000, Wilson contacted the UST alleging that the Debtor knowingly failed to disclose assets in her bankruptcy case. It is undisputed that at that time he and the Debtor were undergoing an acrimonious divorce. On January 29, 2001, the UST filed a motion seeking to reopen the Debtor's case on the grounds that the Debtor failed to disclose all her assets on her bankruptcy petition, the interests of creditors needed to be protected, and a proceeding to revoke discharge might need to be brought. The Court granted the UST's motion and the case was reopened on January 30, 2001.

On March 13, 2001, within days of the deadline to file a complaint, the Plaintiffs brought an adversary proceeding seeking to revoke the Debtor's discharge pursuant to section 727(d)(1) and (d)(2). The Debtor sought to dismiss the complaint but her motion was denied. As a result of the motion, however, the Plaintiffs amended their complaint in order to provide more detail regarding the allegations, including information that was revealed at a reconvened meeting of creditors held on May 16, 2001.

After the Debtor's case was reopened she sought an appraisal of her assets. Sanders & Mock completed an appraisal of the Debtor's personal property on June 12, 2001 (the "Mock Appraisal"). The Debtor stipulated that all of the assets listed on the Mock Appraisal were in her possession and control at the time of her bankruptcy.

A trial of this matter was conducted on February 25 and March 4, 2002. Prior to its commencement, the Plaintiffs withdrew their 727(d)(2) count. Both parties proceeded to present evidence solely on the count under section 727(d)(1).

III. DISCUSSION

Section 727(d)(1) of the Bankruptcy Code provides:

> On the request of the trustee . . . or the United States Trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if–
>
> (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge.

11 U.S.C. § 727(d)(1). In essence, this provision allows the Court to revoke a debtor's discharge when it is shown that the debtor engaged in certain types of fraud in connection with his or her bankruptcy case. Dahar v. Bevis (In re Bevis), 242 BR. 805, 808 (Bankr. D.N.H. 1999). The debtor must have committed a fraud "in fact" which would have barred the discharge had the fraud been known, e.g., the intentional omission of assets from the debtor's schedules. See Lawrence Nat'l Bank v. Edmonds (In re Edmonds), 924 F.2d 176, 180 (10th Cir. 1991); Pelletier v. Donald (In re Donald), 240 B.R. 141, 146 (B.A.P. 1st Cir. 1999); Clements v. Webster (In re Webster), Civ. A. No. 91-A-476, 1991 WL 245006, at *4 (D. Colo. 1991) (quoting Edmonds). See also First Nat'l Bank of Harrisburg v. Jones (In re Jones), 71 B.R. 682, 684 (S.D. Ill. 1987) ("[I]t must be shown that there was fraud in the procurement of the discharge and also that grounds existed

which would have prevented the discharge had they been known and presented in time."). As a general rule to obtain relief under section 727(d)(1), it is insufficient that a debtor's fraud would have rendered a particular debt nondischargeable; rather, the party seeking revocation must allege that the entire discharge would not have been granted but for debtor's fraud. Edmonds, 924 F.2d at 180.

In addition to showing that the debtor obtained his or her discharge by fraud, section 727(d)(1) also requires that the party seeking revocation show that it did not know of such fraud until after the discharge issued. Id. ("Such fraud must be discovered after discharge to effectuate revocation under § 727(d)."); Donald, 240 B.R. at 146 ("Revocation is restricted to fraud which is discovered after the discharge, and a party requesting revocation has the burden of proving its lack of knowledge of the fraud before the discharge.").

In deciding whether to revoke a debtor's discharge, the Court must construe section 727(d) strictly against the objecting party and in favor of the debtor. See Olsen v. Reese (In re Reese), 203 B.R. 425, 430 (Bankr. N.D. Ill. 1997); Notinger v. Weisberg (In re Weisberg), 202 B.R. 332, 334 (Bankr. D.N.H. 1996). The objecting party bears the burden of proof in revocation of discharge actions. See Reese, 203 B.R. at 430. The standard of proof applicable to such actions has been the subject of some debate. See Webster, 1991 WL 245006, at *3-4; Reese, 203 B.R. at 430. Some courts have applied the clear and convincing standard while others have applied the preponderance of the evidence standard. See Webster, 1991 WL 245006, at *3-4 ; Reese, 203 B.R. at 430 (listing cases). This Court finds that preponderance of the evidence is the appropriate standard. As the court in Webster stated, "[i]f a debtor's interest in receiving a bankruptcy discharge justifies only the preponderance of the evidence standard of proof, then revocation of that interest can not rise to a higher level." Webster, 1991 WL 245006, at *4. See also Staub, 208

B.R. at 605 (stating that the trustee has to prove by a preponderance of the evidence the basis for objecting to discharge for fraud and thereby revoking the debtor's discharge); Reese, 203 B.R. at 430 (finding that preponderance of the evidence is the appropriate burden of proof).

"The Court recognizes that revocation of a discharge is a harsh measure and it runs contrary to the general concept of providing a debtor with a fresh start. On the other hand, a debtor does not have a constitutional right to a discharge. A debtor seeking the benefit of a discharge pays a price. That price is the performance of certain duties . . . ." Reese, 203 B.R. at 432 (citations omitted). "The purpose of a discharge is to release an honest debtor from his financial burdens and to facilitate the debtor's unencumbered fresh start. In limited circumstances, the debtor's discharge may be revoked; however revocation is an extraordinary remedy." Weisberg, 202 B.R. at 334 (internal quotations and citations omitted).

A complaint seeking to revoke a debtor's discharge pursuant to section 727(d)(1) may be based upon a determination under section 727(a)(2) that the debtor has concealed or transferred assets with fraudulent intent or a determination under section 727(a)(4)(A) that the debtor knowingly and fraudulent made a false oath or account in connection with his or her bankruptcy case. Walton v. Staub (In re Staub), 208 B.R. 602, 604 (Bankr. S.D. Ga. 1997) (citations omitted); Reese, 203 B.R. at 432. Section 727(a) provides in relevant part:

> The court shall grant the debtor a discharge, unless–
>
> . . .
>
> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed–
>
> > (A) property of the debtor, within one year before the date of the filing of the petition; or
> >
> > (B) property of the estate, after the date of the filing of the petition;

. . .

(4) the debtor knowingly and fraudulent, in or in connection with the case–

(A) made a false oath or account.

11 U.S.C. § 727(a)(2) and (a)(4)(A).

Section 727(a)(2)(A)'s bar to discharge requires four elements to be proven: (1) the debtor transferred, removed, concealed, destroyed, or mutilated, (2) his or her property, (3) within one year of the bankruptcy petition's filing, (4) with the intent to hinder, delay, or defraud a creditor. Rhode Island Depositors Econ. Prot. Corp. v. Hayes (In re Hayes), 229 B.R. 253, 259 (B.A.P. 1st Cir. 1999).

> Courts have . . . looked to certain recognized indicia or "badges of fraud" as further evidence of a debtor's actual intent to hinder, delay, or defraud under § 727(a)(2)(A). They include: (1) lack of or inadequacy of consideration for the transfer; (2) the existence of a family, friendship, or special relationship between the parties; (3) an attempt by the debtor to keep the transfer a secret; (4) the financial condition of the party sought to be charged both before and after the transaction; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after incurring of debt, extent of financial difficulties, or pendency or threat of suits by creditors; and (6) the overall chronology of events and transactions.

Annino, Draper & Moore, P.C. v. Lang (In re Lang), 256 B.R. 539, 541 (B.A.P. 1st Cir. 2000) (per curiam) (citations omitted).

Section 727(a)(4)(A) requires simply that the debtor knowingly and fraudulent made a false statement under oath in connection with his or her bankruptcy case. "[T]he statute necessitates no more than 'an intentional untruth in a matter material to an issue which is itself material' to justify withholding a discharge." Boroff v. Tully (In re Tully), 818 F.2d 106, 112 (1st Cir. 1987) (citation omitted). Matters are material if they are pertinent to the discovery of assets. Matter of Mascolo, 505 F.2d 274, 277-78 (1st Cir. 1974) (quoted in Tully, 818 F.2d at n.4). The First Circuit Court of Appeals has stated clearly that "the very purpose of certain sections of the

law, like 11 U.S.C. § 727(a)(4)(A), is to make certain that those who seek the shelter of the bankruptcy code do not play fast and loose with their assets or with the reality of their affairs. The statutes are designed to insure that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction." Tully, 818 F.2d at 110.

Given these requirements of the Bankruptcy Code, the Court must turn to the facts of the Debtor's case. It is undisputed that the Plaintiffs did not learn of the Debtor's failure to disclose the extent and the value of the Debtor's assets nor the transfer and sale of assets, until after the Debtor's discharge entered. Accordingly, the Plaintiffs have satisfied the second requirement of section 727(d)(1). With respect to the first element of section 727(d)(1), the Court must undertake a careful analysis of the evidence.

A. Jewelry

On Schedule B of her petition, the Debtor listed "Sapphire & diamond ring ($500)" for jewelry under category 7 for "Furs and jewelry." The jewelry itemization was not correct. At the time of her bankruptcy filing, the Debtor owned several other pieces of jewelry. The Mock Appraisal contained the following itemization and appraised values:

Jewelry	Value
Van Cleef & Arpels sapphire and diamond ring	$2,000.00
Van Cleef & Arpels gold and ruby link chain bracelet	$700.00
Cartier yellow gold bracelet	$700.00
Rolex oyster perpetual date lady's wristwatch	$900.00
Van Cleef & Arpels gold link chain	$1,000.00

Sterling silver twist bracelet	$150.00
Sterling silver and gold twist bracelet	$225.00
Strand 3/16 cultured pearls	$400.00
Pair white gold and diamond screw-back pierced earrings	$225.00
Total	$6,300.00

In response to a question regarding the fair market value of the Debtor's jewelry, the Debtor's financial worksheets prepared for her attorney state "see attached." The Debtor testified that she brought a list of jewelry to her meeting with Attorney Sager, which list came from her insurance policy. It is undisputed that as of the petition date the Debtor had insured her jewelry for $28,000.00. The evidence established that Attorney Sager told the Debtor to disregard the insurance values because those values are often inflated and reflect replacement cost not the price at which the items could be sold. In accordance with her attorney's advice, the Debtor brought her jewelry to a jeweler in North Conway, New Hampshire, and he told her that he would purchase the whole lot for $500.00. The Debtor's father confirmed this valuation and this is the value that was used by the Debtor and Attorney Sager in completing Schedule B. The Court is satisfied that the failure to itemize the jewelry was an error prompted by what was perceived as a de minimis valuation of exempt property. At the time the Debtor completed her schedules the Mock Appraisal was not available. While Schedule B, a statement under oath, is incorrect in that it fails to itemize the Debtor's jewelry, the Plaintiffs have not established that the Debtor made a false oath with the requisite fraudulent intent.

B. Furniture

The Debtor disclosed on Schedule B that she owned "Household Furniture" worth $2,000.00. The Mock Appraisal listed the following household furnishings as being worth more than $500.00:

Furniture	Value
American Queen Anne highboy	$5,000.00
Persian rug w/floral border	$900.00
Chippendale style burl and cross banded lowboy	$1,500.00
Pair walnut and mahogany Federal style diminutive chests	$800.00
Queen Anne pine and maple oval tea table	$1,200.00
Persian rug w/blue border and floral center	$750.00
Total	$10,150.00

At trial it was revealed that several of these pieces were awarded to Wilson in the divorce:

Furniture	Value
Pair walnut and mahogany Federal style diminutive chests	$800.00
Queen Anne pine and maple oval tea table	$1,200.00
Persian rug w/blue border and floral center	$750.00
Total	$2,750.00

Several of the pieces listed on the Mock Appraisal were purchased by Wilson as gifts for the Debtor twenty years ago. The evidence did not establish that the Debtor knew the value of these antiques. Although the Debtor may or should have known their value because of their listing on insurance policies, the Debtor's attorney told the Debtor to ignore insurance values for purposes of completing her bankruptcy schedules. In addition, the Debtor's experience prepetition, with her

jewelry for example, confirmed her attorney's statements that items cannot be sold for an amount approaching insurance values.

No evidence was presented that the Debtor had any specific knowledge regarding antiques. In fact, the Debtor testified that she did not particularly care for some of the items purchased by Wilson. In addition the Debtor testified that the lowboy, which Mock appraised at a value of $1,500.00, was purchased by the Debtor for $200.00.

While the furniture was not itemized on Schedule B, and arguably its value was not correct, the evidence did not establish that the Debtor's omission or valuation errors were made knowingly or with fraudulent intent. Therefore, the Plaintiffs have not established that the Debtor knowingly and fraudulently made a false oath, which would have warranted denial of the Debtor's discharge under section 727(a)(4)(A).

C. Prints and Paintings

The Debtor testified that she believed the paintings she owned with her husband were worth $800.00 at the time her petition was filed. Accordingly, on Schedule B, she listed her one-half interest in "Pictures & art objects" as having a current market value of $400.00. At the time the petition was filed, the Debtor had an interest in the following prints and paintings:

Painting	**Value**
David Holmes "Fisherman's Shack" painting	Purchased for $12,000.00; insured by Debtor for $12,100.00; Debtor was told by F.O. Bailey that it was worth between $500.00 and $1,000.00; Wilson consigned to Wally Findlay Galleries on December 19, 2000

Redwig T. Nez "Son of Peacemaker" portrait, purchased from Wally Findlay Galleries	Insured by Debtor for $700.00; listed on Mock Appraisal as being worth $275.00
Marinua Welman "Keller" western mountain scene painting, purchased from Wally Findlay Galleries	Insured by Debtor for $4,500.00; listed on Mock appraisal as being worth $300.00
Currier & Ives	Consigned to F.O. Bailey on August 24, 1999; sold by F.O. Bailey on or about May 5, 2000; Debtor ultimately received $900.00

Wilson testified that one of his client's gave the Debtor an Ansel Adams "Yosemite Valley" print as a gift. The Debtor testified that it belonged to Wilson. In any event, it is undisputed that the Debtor's father consigned the print to F.O. Bailey and it was returned on March 1, 2000. The print was ultimately sold at The Ansel Adams Gallery on October 25, 2000, for $9,747.50. Wilson received net proceeds in the amount of $5,850.00 by check dated November 21, 2000. Pursuant to the couple's divorce decree, the money was to be used to pay their son's school tuition as were any proceeds from the sale of the David Holmes painting. In addition, Wilson was awarded the Marinua Welman "Keller" western mountain scene painting in the divorce.

Given the values of the Mock Appraisal and the estimate the Debtor obtained for the David Holmes painting from F.O. Bailey, it is difficult for the Court to conclude that the value on Schedule B for picture and art objects, which the Debtor arrived at in discussions with her attorney, was totally unreasonable. The Court finds that the Debtor disclosed the existence of paintings. The Plaintiffs did not present any evidence that she misled or failed to answer any questions that the Trustee may have had about the extent or the value of her painting collection.

The Court finds that the Plaintiffs have not established that grounds existed to deny the Debtor her discharge under either section 727(a)(2) or (a)(4)(A).

D. Power of Attorney

On August 1, 1999, Wilson gave a power of attorney to the Debtor so that she could "deal with all [his] affairs including but not limited to the sale of assets, use of checking accounts and the exclusive right to deal with Greentree Associates." On August 17, 1999, Wilson gave a second power of attorney to the Debtor so that she could "dispose of [his] assets as she sees fits. This includes but is not limited to the sale of automobiles, paintings, and withdrawal from checking, saving, money market account in [his] name." The Debtor did not disclose anywhere on her statement of financial affairs or schedules or at the first meeting of creditors that she possessed these powers of attorney. The Plaintiffs argue that the Debtor should have disclosed them, that she did not disclose them with fraudulent intent, and therefore her discharge should be revoked.

No evidence was presented that the Debtor knew that these powers of attorney were assets to be listed on her schedules. Even Attorney Sager testified that she did not ask the Debtor about the possibility of her holding any powers of attorney. Attorney Sager further testified that if she had known about the powers, she "hoped" she would have listed them on the Debtor's schedules or statement of financial affairs.

The evidence established that the Debtor and her husband separated in May 1999. In June 1999, she discovered Wilson's pending incarceration with no more than a week's notice after he had moved out of the couple's house. At the time, the Debtor had no job, little money in the bank, two teenage boys to care for, and more bills than she had the ability to pay. When she filed her petition, the Debtor's Schedules I and J reflected a monthly deficit of $7,308.00. Yet there was no testimony at trial that anyone asked the Debtor how she was closing that gap. Clearly, Schedules I

and J do not reflect any intention on the Debtor to hide expenditures. Without the sale of her husband's assets under the powers of attorney, as well as cash from Wilson's parents, the Debtor could not have provided a home or necessary education for her children. While the Debtor's schedules do omit the powers of attorney, the totality of the schedules do not reflect an intent to conceal them. If the Trustee had questioned the Debtor about Schedules I and J, it is likely that he would have elicited information from her that she possessed powers of attorney from her husband and that she was using them to liquidate his assets in order to survive. The Court cannot conclude that the Debtor intentionally omitted the powers of attorney from her schedules and statement of financial affairs.

E. Bank Account, Truck, Canoe, and Retirement Account

The Debtor's statement of financial affairs and schedules omit any reference to the liquidation of Wilson's truck, his canoe, his bank account, or his retirement account. The evidence supports a finding that in the six months preceding the petition date the Debtor was under extraordinary emotional and financial pressure. Her husband was in jail, and the Debtor was left with no real means to support herself and her children. The Debtor's parents came from out-of-state to live with her in order to provide her emotional and financial support. The Debtor's attorney testified that the Debtor's father accompanied the Debtor to the initial conference and that the Debtor was under stress. Without the sale of Wilson's assets, and financial support from Wilson's parents, the Debtor could not have paid her living expenses.

The Debtor did not believe that her liquidating her husband's assets, as a means to support her and her children, was required to be disclosed in her bankruptcy. In the Debtor's mind it was just another form of income, like the monies that she received from her in-laws. The Court cannot conclude that the Debtor's belief was unreasonable as the assets being liquidated were not even

her own, but rather her husband's. In addition, the evidence does not support a finding that the Debtor failed to disclose the transfer of her husband's assets with any fraudulent intent. While these transfers were not listed, no evidence was presented to convince the Court that the Debtor had any intention to conceal that she was selling and liquidating assets in order to pay her bills. Again, a review of Schedules I and J would have indicated that the Debtor must have been making up the monthly deficit somehow. The Court finds that the Debtor did not possess the requisite fraudulent intent during this very turbulent time in her life.

F. Dinnerware

On August 24, 1999, the Debtor's father consigned a partial set of Calyx ware and a Christophle tea set. On September 15 and 24, 1999, F.O. Bailey issued checks to the Debtor's father in the total amount of $450.00 for the partial set of Calyx ware and, on November 19, 1999, F.O. Bailey issued a check to the Debtor's father in the amount of $585.00 for the Christophle tea set. On August 1, 2001, F.O. Baily issued a check to the Debtor's father in the amount of $340.00 for the remainder of the Calyx ware.

The Debtor testified that she did not believe that the sale of her property for her and her children in order "to survive" was a transfer that needed to be listed on her bankruptcy petition. The Debtor's judgment in this regard is questionable as is her apparent failure to even discuss these transfers with her attorney. However, the schedules disclose a number of assets and a substantial gap between the Debtor's income and expenses. The Court finds that a rational person with fraudulent intent would not disclose such a deficit without either an explanation as to how she maintained her household or lying to her attorney and the Trustee. There is no evidence that the Debtor was asked any questions regarding her ability to meet her monthly expenses nor was there any evidence that she lied in response to any questions posed by the Trustee. Accordingly, the

Court finds that the Plaintiffs have not satisfied their burden of establishing that the Debtor failed to disclose these transfers with intent to hinder, delay, or defraud her creditors or the Trustee.

IV. CONCLUSION

Based upon the evidence presented, the Court concludes that the Debtor did not obtain her discharge through fraud. Accordingly, the Plaintiffs' claim under section 727(d)(1) must be denied. The Debtor will retain her discharge.

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate judgment consistent with this opinion.

DATED this 28th day of May, 2002, at Manchester, New Hampshire.

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge