



1 been significantly diminished, and the IRS remains an unpaid  
2 creditor.

3 Under 11 U.S.C. § 1112(b)(4), there are multiple grounds for  
4 "cause" for conversion. In this case applicable grounds include  
5 failure to comply with this Court's written order; failure to  
6 timely file operating reports; diminution of the assets of the  
7 estate in unauthorized payments; failure to timely file a  
8 disclosure statement and plan. The most significant ground, in  
9 this Court's view, is the debtors' failure to comply with the  
10 written sale order, which required the debtors to obtain court  
11 authorization to use net sales proceeds of the Maine Avenue  
12 property. They never made any attempt to do so, instead using  
13 much of the funds at their own discretion, sometimes to pay off  
14 pre and post-petition arrears, and sometimes for other purposes.

15 The Court finds and concludes that ample grounds have been  
16 established to support conversion to Chapter 7. Debtors,  
17 however, countered on the day of the hearing with their own  
18 request to convert to Chapter 13. They recognized that they  
19 would not have been eligible as Chapter 13 debtors when they  
20 originally filed their Chapter 11 case because the amount of  
21 secured debt exceeded the ceiling of 11 U.S.C. § 109. However,  
22 they reasoned, the sale of the Maine Avenue property took that  
23 liability off their schedules, thereby bringing them well under  
24 the ceiling.

25 The Court afforded the United States Trustee a brief period  
26 of time to evaluate the debtor's counterproposal, which has been

1 done. The United States Trustee correctly points out that post-  
2 petition events do not alter the eligibility analysis for Chapter  
3 13 debtors under § 109. Rather, eligibility is determined as of  
4 the petition date. 11 U.S.C. § 109(e); In re Slack, 187 F.3d  
5 1070 (9<sup>th</sup> Cir. 1999). Accordingly, Chapter 13 is not an option  
6 for these debtors by way of conversion of the instant case.

7 The remaining issue, as set out in 11 U.S.C. § 1112(b)(1),  
8 is whether to convert this case or dismiss it, "whichever is in  
9 the best interest of creditors and the estate . . ." The debtors  
10 represent that the IRS is the only creditor remaining unpaid.  
11 That may, or may not be accurate. A major problem for the Court  
12 is that the IRS claim exceeds the amount of sales proceeds the  
13 debtors say they still hold. Apparently, no regard has been  
14 given in distributing funds to whatever priority, if any, the IRS  
15 might have. Given the circumstances, the Court believes the best  
16 interests of the creditors and the estate requires conversion to  
17 Chapter 7 rather than dismissal. Perhaps, after review and a  
18 more complete disclosure to a trustee than the Court has  
19 received, a trustee might be persuaded to agree to dismissal.  
20 But such an independent analysis is necessary.

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1           Accordingly, the United States Trustee's motion to convert  
2 to Chapter 7 shall be, and hereby is granted.

3           IT IS SO ORDERED.

4           DATED: OCT 15 2008

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7           PETER W. BOWIE, Chief Judge  
8           United States Bankruptcy Court  
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