

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:06-bk-00620-KSJ
Chapter 13

SUSAN WACZEWSKI,

Debtor.

MEMORANDUM OPINION PARTIALLY
GRANTING AND PARTIALLY DENYING
MOTION BY DEBTOR FOR
SANCTIONS AGAINST CHAPTER 7 TRUSTEE
AND CHAPTER 7 COUNSEL

This case came for hearing on October 16, 2006, to consider the Motion by Debtor for Sanctions against the Chapter 7 Trustee and Chapter 7 Counsel (the "Motion for Sanctions") (Doc. No. 250), the Response to this Motion by the Trustee joined with his Motion to Strike a Portion of the Joint Motion (Doc. No. 251), and the Joint Response by Debtor and Special Counsel to Trustee's Response (Doc. No. 253).

Susan Waczewski is the debtor in this Chapter 13 case separately administered from the Chapter 7 case of her husband, Jose Luis Waczewski, Case No. 6:99-bk-08433. Susan Waczewski previously was a Chapter 7 debtor with her husband in that Chapter 7 case, and their estate was administered by a Chapter 7 Trustee, Leigh Meininger¹. During the course of his administration of the Chapter 7 case and during the period Mr. and Mrs. Waczewski's estates were jointly administered, Meininger obtained total funds in the amount of \$20,000 in connection with two settlements he reached.

¹ Local Rule 1015 of the Local Rules for the United States Bankruptcy Court for the Middle District of Florida provides that when a husband and wife file a joint petition (as Susan and Jose Waczewski originally did here), the "trustee shall administer their estate jointly without order of the court." Local Rule 1015 further provides that if a debtor desires that the trustee administer the estates separately, the debtor may move for an order of separate administration. Here, Susan Waczewski filed a Motion for Separate Administration (Doc. No. 43), which the Court granted on February 10, 2003 (Doc. No. 54). As such, between the date the debtors, as husband and wife, filed a joint petition, on October 12, 1999, and the date the order directing the trustee to separately administer the two estates was entered, February 10, 2003, the Chapter 7 Trustee jointly administered the two estates, pursuant to Local Rule 1015.

The two settlements both involved litigation brought by Susan and Jose Waczewski asserting personal injury claims each held against the various defendants. Upon reaching the first settlement, the debtor requested, and the trustee agreed, to divide the proceeds between the two debtors. Susan Waczewski was entitled to receive 87 percent of the proceeds, which totaled \$9,200 for the first settlement, and Jose Waczewski was to receive the remaining 13 percent of the proceeds. As such, upon reaching the first settlement, Susan was entitled to receive \$8,000, and Jose was entitled to receive \$1,200.

After an appeal and the conversion of Susan's case to a Chapter 13 proceeding, and the appointment of a Chapter 13 trustee, the Chapter 7 trustee recently has filed applications seeking compensation for the trustee's statutory compensation as well as seeking fees and costs for his attorneys (Doc. Nos. 208, 210, and 259). The debtor filed the current Motion for Sanctions (Doc. No. 250), asserting that the Chapter 7 trustee failed to properly allocate the settlements between the two estates. The debtor is correct on this point. The Chapter 7 trustee has turned over the entire \$20,000 he received in connection with both the first and second settlements to the Chapter 13 trustee. Absolutely no allegation exists that Mr. Meininger in any way misappropriated or misused the funds. Rather, he simply turned over all funds in his possession to the Chapter 13 trustee pursuant to his interpretation of the guidelines supplied by the United States Trustee's office.

However, the debtor is correct that the Chapter 7 Trustee is obligated to allocate the settlement funds between the two estates. The *first* settlement, pursuant to the agreement of the parties, was to be divided such that Susan received \$8,000, and Jose received \$1,200. No party previously has requested the Court to allocate the balance of the settlement proceeds totaling \$10,800 received from the *second* settlement.

However, in the Motion for Sanctions, the debtor suggests that the same allocation percentage (87 percent/13 percent) should apply to the division of the proceeds of the second settlement. The Court agrees with this division and adopts the debtor's position. From the \$10,800 received upon the second settlement, the estate of Susan Waczewski is entitled to receive the sum of \$9,396.00. The estate of Jose Waczewski is entitled to receive the sum of \$1,404.00.

As such, the estate of Jose Waczewski is entitled to a *total* distribution of \$2,604.00 (\$1,200 attributable to the first settlement and \$1,404 attributable to the second settlement) from the

\$20,000 currently held by the Chapter 13 trustee. The Chapter 13 trustee is directed to return these funds to the Chapter 7 trustee, Leigh Meininger, for distribution in connection with Jose Waczewski's estate. However, the Chapter 13 trustee is directed to retain and administer the balance of the funds, \$17,396.00, in the estate of Susan Waczewski.

In addition to the request to allocate the settlement funds between the estates of Susan and Jose Waczewski, the Motion for Sanctions goes into extraneous and scandalous allegations directed against Mr. Meininger. For example, Susan Waczewski asserts that, by turning over the entire \$20,000 in his possession to the Chapter 13 Trustee, Mr. Meininger apparently "sought to defraud this Court" and that he "has continuously acted in this case in a manner inconsistent with the best interest of creditors."

The Court finds that, although Mr. Meininger should have retained 13% of the \$20,000 he mistakenly released to the Chapter 13 Trustee, he in no way committed any type of fraud or defalcation to this Court or to the creditors in the estates of Susan and Jose Waczewski. Leigh Meininger has been a Chapter 7 trustee in this district for almost 20 years. He consistently has demonstrated his trustworthiness, reliability, and, in all ways, has demonstrated a high level of competence and professionalism in his obligations. The debtors make unfounded assertions against Mr. Meininger, all of which are intended to disparage his hard-earned, good reputation. The debtors have interpreted a mistake as some type of nefarious action, which is simply not the case. As such, the Court finds that there is no basis for any additional relief sought by the debtors and certainly finds no basis for any sanctions against Mr. Meininger.

Indeed, if any sanctions were to be considered, they would be against Susan Waczewski for making the various unfounded statements contained in the Motion for Sanctions. However, because she does point to an honest mistake and the need to allocate the settlement funds between the two estates, the Court will exercise its discretion and not award any sanctions against the debtor at this juncture.

Accordingly, for the reasons stated above, the Court will partially grant the debtor's Motion to the extent that it will allocate funds in the total amount of \$2,604.00 which shall be paid from the Chapter 13 estate of Susan Waczewski to the Chapter 7 estate of Jose Waczewski. Otherwise, the Motion is denied. The Court also denies Meininger's request to strike a portion of the debtor's Motion for Sanctions or to award any sanctions against the

debtor. A separate order consistent with this memorandum opinion shall be entered.

DONE AND ORDERED in Orlando, Florida, this 27th day of October, 2006.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge