UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re	)	
	)	
KAREN LYNN FISCHER,	)	Case No. 6:09-bk-07498-KSJ
	)	Chapter 7
Debtor.	)	
	)	
	)	

ORDER GRANTING TRUSTEE'S MOTION TO DETERMINE WHETHER A BANKRUPTCY COURT ORDER TO TURNOVER FUNDS TO THE DEBTOR IS SUPERCEDED BY A GARNISHMENT WRIT ISSUED BY A STATE COURT

The Chapter 13 Trustee, Laurie K. Weatherford, has filed a Motion to Determine Whether an Order of this Court to Turn Over Funds to the Debtor Can be Superseded by a Writ of Garnishment Issued by Another Court (Doc. No. 29) (the "Trustee's Motion"). In the Trustee's Motion, the trustee asks this Court for guidance as to whether she should comply with an order of this Court, entered on October 13, 2009 (Doc. No. 25), directing her to turn over $1,337 to the debtor or, instead, comply with a conflicting garnishment order entered later, on October 28, 2009, by a state court directing her to turn over the same funds to a creditor, Chase Bank USA, N.A. Because the courts disagree on whether a creditor can garnish funds held by a Chapter 13 trustee intended for turnover to a debtor, and because the creditor in this case apparently now consents to the debtor receiving the funds, the Court will grant the Trustee's Motion and direct her to turn over the funds to the debtor.

The debtor originally filed this case as a Chapter 13 proceeding. When she could not make timely payment on her debts, the Court entered an order dismissing the case and directed the Chapter 13 trustee to turn over all monies in her possession, $1,337, to the debtor (Doc. No. 25). The debtor, on November 2, 2009, filed a notice seeking to convert her Chapter 13 case to a Chapter 7 case (Doc. No. 27). The Court converted the case the next day (Doc. No. 31).

In the time between the dismissal of the Chapter 13 case and the debtor's request to convert this case to Chapter 7, on October 28, 2009, Chase, a creditor of the debtor, received a Writ of Garnishment from a Florida state court. Before the trustee had time to pay the debtor her monies, Chase served the Writ on the trustee seeking to garnish the funds. The trustee then filed her Motion seeking guidance on whether this Court's dismissal order could be superseded by the state court's Writ of Garnishment (Doc. No. 29).

The Court scheduled a hearing on the Trustee's Motion for December 1, 2009 (Doc. No. 38). Chase received timely notice of the hearing. Chase did not attend the hearing or send a representative. Chase did not seek a continuance or otherwise oppose the trustee's request to allow her to disburse the monies to the debtor. Moreover, the Court wanted to insure that Chase had a chance to participate in the resolution of this matter, even after the hearing. The Court specifically allowed the parties, including Chase, to file written memorandums or informally to submit case law in support of their respective positions by January 8, 2010. Chase failed to submit any written response to the Trustee's Motion. So, because Chase has failed in any way to protect its rights or argue the superiority of its garnishment order, the Court concludes that Chase, instead, consents to the distribution originally ordered by this Court.

Black letter bankruptcy law and 11 U.S.C. 1326(a) require a Chapter 13 trustee, upon the dismissal of a case, to return to the debtor all remaining funds with some exceptions not relevant in this case. Bankruptcy courts are split on whether a creditor, such as Chase, then can garnish funds held by a trustee but intended for the debtor. Some courts refuse to allow the garnishment citing various public policy concerns. In re Sexton, 297 B.R. 375 (Bankr. M.D. Tenn. 2008); *In re Inyamah*, 378 B.R. 183 (Bankr. S.D. Ohio 2007); *In re Bailey*, 330 B.R. 775 (Bankr. D. Or. 2005); *In re Davis*, No 04-300020-DHW, 2004 WL 3310531 (Bankr. M.D. Ala. Jan. 6, 2004); *In re Oliver*, 222 B.R. 272, 273-74 (Bankr. E. D. Va. 1998); *In re Walter*, 199 B.R. 390, 391-92 (Bankr. C.D. Ill

1996); In re Clifford, 182 B.R. 229 (Bankr. N.D. Ill. 1995). Other courts have concluded that funds held by the trustee post-dismissal *are* subject to garnishment, reasoning that because the automatic stay lifts upon dismissal, the bankruptcy estate terminates and the trustee retaining debtor funds becomes in effect a "debtor of the Debtor." *In re Schlapper*, 195 B.R. 805, 806 (Bankr. M.D. Fla. 1996); *In re Beam*, 192 F.3d 941 (9th Cir. 1999); *In re Steenstra*, 307 B.R. 732, 738 (1st Cir. B.A.P., 2004); *In re Brown*, 280 B.R. 231 (Bankr. E.D. Wisc. 2002); *Clark v. Commercial State Bank*, No. NO-00-CA-140, 2001 WL 685529 (W.D. Tex. April 16, 20010; *In re Doherty*, 229 B.R. 461, 463 (Bankr. E.D. Wash. 1999); *In re Mishler*, 223 B.R. 17, 20 (Bankr. M.D. Fla. 1998).

In this case, Chase has done nothing to argue in support of its garnishment. Given the division among courts on whether a creditor can or cannot garnish funds held by a Chapter 13 trustee and given the apparent consent of Chase to the distribution of the funds to the debtor, the Court concludes that the debtor should receive the $1,337. Accordingly, it is

ORDERED:

1. The Trustee's Motion (Doc. No. 29) is granted.

2. The trustee again is directed to disburse $1,337 to the debtor, as required initially by this Court in its dismissal order (Doc. No. 25). The Writ of Garnishment later obtained by Chase shall have no force and effect as to the transfer of these funds.

DONE AND ORDERED in Orlando, Florida, on March 29, 2010.

/s/ Karen S. Jennemann

KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

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Trustee: Laurie K. Weatherford, P.O. Box 3450, Winter Park, FL 32790

Trustee: George E. Mills, Jr., P.O. Box 995, Gotha, FL 34734-0995

United States Trustee: 135 W. Central Blvd., Suite 620, Orlando, FL 32801

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