

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:03-BK-04590-ABB

ROBERT ALTOMARI and
ANGELA ALTOMARI,

Debtors.

GENE T. CHAMBERS,

Plaintiff,

vs. Adv. Pro. No. 04-45

CAROL BURKE,

Defendant.

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

This adversary proceeding came on for trial on July 8, 2004. The Defendant, Carol Burke, failed to appear. Based on the evidence proffered without objection, the Court makes the following findings of fact and conclusions of law pursuant to F.R.B.P. 7052:

Findings of Fact

1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1334(a) & (d), 28 U.S.C. § 157(a) & (b)(1) and the Order of the United States District Court for the Middle District of Florida, referring to the Bankruptcy Court all cases and proceedings filed under the Bankruptcy Code in this district.

2. The Debtors, Robert and Angela Altomari ("Debtors"), filed for relief under Chapter 7 of the Bankruptcy Code on or about April 3, 2003, and Gene T. Chambers was appointed to serve as the Chapter 7 trustee for the estate ("Trustee").

3. Carol Burke, ("Burke"), is an individual who was last known to reside at 671 Stallings Ave., Deltona, FL 32738.

4. Burke is Angela Altomari's mother.

5. The Debtors made the following payments, totaling \$36,448.04, to Burke from the proceeds of the sale of real estate titled in the Debtors' name.

Date	Property	Commission
02/27/2002	1301 West Wellington	\$ 3,954.00
04/05/2002	2930 Malcom Dr.	5,400.00
04/30/2002	1687 Bavon Dr.	6,374.04
8/12/2002	131 Leon	5,600.00
8/21/2002	7903 Albania	8,120.00
10/10/2002	3338 Crimson	7,000.00

6. The transfers were made to Burke as "real estate commissions."

7. At all pertinent times, Burke was not a licensed real estate agent or broker.

8. The Debtors were insolvent at the time of the transfer or became insolvent as a result of the transfers.

9. The Defendant is the initial or immediate transferee.

Conclusions of Law

All of the transfers set forth above were made pursuant to illegal contracts for the payment of real estate commissions. Florida Statutes §475.17 provides for the rescission of contract in these circumstances. *See Vista Designs, Inc. v. Silverman*, 774 So.2d 884, 886 (Fla. 4th DCA 2001)(citing *Cooper v. Paris*, 413 So.2d 772 (Fla. 1st DCA 1982)). The cause of action for rescission of the contract is property of the bankruptcy estate by virtue of §541. The Trustee is entitled to rescission and judgment in the amount of the illegal contract payments to the Defendant, Carol Burke. In addition, all of the transfers except the February 27, 2002, payment were within the year prior to the bankruptcy filing and for inadequate consideration. As such, the Trustee is entitled to avoidance of the payments pursuant to §548(a)(1)(B) and recovery of the avoided payments pursuant to §550 of the Bankruptcy Code.

The Court will enter a separate judgment in accordance with F.R.B.P. 9021.

DONE AND ORDERED in Orlando,
Florida on this 10th day of March, 2005.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

Copies to:

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Gene T. Chambers, P.O. Box 533987, Orlando, FL
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Carol Burke, 671 Stallings Avenue, Deltona, FL
32738.