

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:03-bk-12002-ABB
Chapter 13

MICHAEL EDWARD GERAGHTY and
JUDY ANN GERAGHTY,

Debtors.

ORDER

This matter came before the Court on the Application for Return of Unclaimed Funds (Doc. No. 41) filed by Douglas Bell d/b/a DREK Enterprise (“Applicant”), an unclaimed funds locator, on behalf of the Debtors Michael Edward Geraghty and Judy Ann Geraghty requesting turnover of \$20,051.40 held in the Court’s registry account of unclaimed funds. An evidentiary hearing was held on April 27, 2009 at which Applicant and counsel for the Debtors appeared.

Applicant was directed to submit legal authorities in support of its Application. Applicant made no post-hearing submissions. The Application is due to be denied for the reasons set forth herein.

The Debtors filed this case on October 14, 2003. They, on behalf of Florida Finance Group Inc., filed two secured claims: (i) Claim No. 6 for \$13,900.00 relating to a 1996 Ford Aerostar; and (ii) Claim No. 7 for \$14,300.00 relating to a 1995 Jeep Cherokee. Distributions were made to creditors holding allowed claims, including Florida Finance Group Inc., pursuant to the Debtors’ confirmed Plan. The Debtors completed their Plan and received a Discharge on June 14, 2007 (Doc. No. 34).

Four distribution checks issued to Florida Finance Group Inc. totaling \$20,051.40 were not negotiated and were paid into the Court’s registry by the Chapter 13 Trustee pursuant to 11 U.S.C. Section 347(a) (Doc. Nos. 36, 37). The case was closed on December 20, 2007.

Applicant, as set forth in its Affidavit, communicated with a former principal of Florida Finance Group Inc. who stated the company had been dissolved and he had no interest in pursuing the registry funds. The former principal refused to execute a disclaimer regarding the funds.

The Debtors each executed a Limited Power of Attorney authorizing Applicant to pursue the funds, for a fee, on their behalf. Applicant contends it, as the Debtors’ agent, is entitled to recover the unclaimed funds for the Debtors. Applicant presented no legal basis for its contention.

The funds paid into the registry of the Court result from unclaimed Chapter 13 distribution checks. Applicant has the burden to establish the Debtors have “a present entitlement” to the funds. *In re Acker*, 275 B.R. 143, 144 (Bankr. D.D.C. 2002). The funds constitute property of the estate to be disposed of in accordance with Chapter 129 of title 28. 11 U.S.C. § 347(a); Fed. R. Bankr. P. 3011.¹ Unclaimed funds may only be disbursed to the “rightful owners” upon “full proof of the right thereto.” 28 U.S.C. §§ 2041, 2042.

Only the creditor to whom distribution was to be made is the rightful owner of the unclaimed funds:

A creditor to whom a distribution in a bankruptcy case is payable retains a property interest in such funds Under statutory requirements and due process principles, the Court has the duty to protect the original claimant’s property interest by making sure that unclaimed funds are disbursed to their true owner The ‘rightful

¹ “Ninety days after the final distribution under section 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.” 11 U.S.C. § 347(a). In contrast, unclaimed property in chapter 9, 11, or 12 cases, becomes property of the debtor or of the entity acquiring the assets of the debtor through the plan pursuant to 11 U.S.C. Section 347(b).

owner' of unclaimed funds paid into the Court under § 347(a) is the holder of the proof of claim on account of which the trustee made the distribution.

In re Applications for Unclaimed Funds in Exhibit "A", 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005).

Applicant has not established the Debtors have a present entitlement to the unclaimed funds. The rightful owner of those funds is Florida Finance Group Inc. In re Rush Hampton Indus., Inc., 379 B.R. 192, 193-94 (Bankr. M.D. Fla. 2007). Neither the Debtors, nor any agents or assignees of the Debtors, are entitled to the unclaimed funds held in the registry of the Court relating to this case. Applicant's Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Applicant's Application (Doc. No. 41) is hereby **DENIED**.

Dated this 21st day of May, 2009.

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