

**IT IS SO ORDERED.**

**Dated: 02:34 PM May 01 2008**

  
MARILYN SHEA-STONUM *CAW*  
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	CASE NO. 06-52553
	)	
Betty K. Jarvis,	)	CHAPTER 7
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM
	)	
	)	
	)	<b>ORDER RE: SUPPLEMENTAL CLAIMS</b>
	)	<b>NOTICE TO CREDITORS</b>

This matter was heard by the Court on March 12, 2008 (the “Hearing”) pursuant to Debtor’s Objection to Trustee’s Notice of Assets & Request for Notice to Creditors (“Objection”)[docket #46], and Trustee’s Response to Debtor’s Objection (“Response”)[docket #48]. Present during the Hearing were Trustee Richard A. Wilson (“Trustee”), and Gregory L. Hail, counsel for Debtor, Betty K. Jarvis (“Debtor”)

Debtor’s Objection pertains to Trustee’s second Notice of Assets & Request for Notice to Creditors filed on January 31, 2008 (“Second Notice of Assets”) [docket #44]. Debtor contends that the set of claims filed in response to Trustee’s first Notice of Assets of Assets & Request for Notice

to Creditors (“First Notice of Assets”)[docket #36] were not promptly administered, and that granting creditors additional opportunity to file proofs of claim resulted in detriment to the Debtor.

After the Hearing, the Court gave the Trustee until March 21, 2008 to file a brief in support of his position. Trustee filed his Supplemental Response on March 14, 2008 [docket #52], and the matter was taken under advisement by the Court.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b).

### **BACKGROUND**

Based on the above-referenced pleadings and the Court’s discussion with both counsel during the Hearing regarding their respective positions on this issue, the following relevant facts and chronology of events were established.

This case commenced on November 28, 2006 as a no asset chapter 7 case. In a no asset case, there is no deadline by which to file a proof of claim. *See Judd v. Wolfe*, 78 F. 3d 110, 114 (3d Cir. 1996). Trustee filed the First Notice of Assets on April 30, 2007 after receiving an installment of funds, over \$23,000, into the bankruptcy estate. On May 2, 2007, pursuant to Fed. R. 2002(f)(3) and Fed. R .Bankr. P. 3002(c)(5), the Clerk of this Court served upon all creditors in interest a Notice of Need to File Proof of Claim [docket #38] giving all creditors until July 20, 2007 (“Bar Date”) within which to file a proof of claim. Five proofs of claim totaling \$23,785.38 were filed by the Bar Date. In November, 2007 the second installment of funds, over \$28,000, was received into the bankruptcy estate, resulting in total estate funds of \$49,229.59. All estate funds resulted from the death of Debtor’s husband and consisted of death benefits from a life insurance policy and the proceeds of a 401(k) plan. Based on the claims filed as of the Bar Date, the debtor was due a substantial refund of

approximately \$19,000.

When Attorney Hail turned over the second installment of funds to the Trustee in November 2007, he requested prompt administration. Debtor had already lost her home and car, no longer had the support of her husband, and needed the money as soon as possible to pay her bills. Attorney Hail got no response from the Trustee prior to receiving the Second Notice of Assets on January 31, 2008. On February 2, 2008, the Clerk of this Court mailed a second Notice of Need to File Proof of Claim [docket #45] giving all creditors until March 3, 2008 to file claims. Four additional claims totaling approximately \$11,000 were filed in response.

The Trustee candidly admitted during the Hearing that one of the reasons he filed the Second Notice of Assets was his interest in increasing distributions to creditors and therefore increasing his trustee fee. The Trustee also reiterated to the Court that it is the regular practice of the panel trustees in Akron to issue a second request for proofs of claim.

### **DISCUSSION**

The Court notes that to its knowledge this is the first time anyone has opposed the Akron panel trustees' standard practice of issuing a second request for proofs of claim in asset cases. When asked by the Court during the Hearing what statutory authority he had for sending out a second request for proofs of claim after the Bar Date, the Trustee could not cite to any such authority. Similarly, in his Supplemental Notice he indicated that he was not able to find any code provision or case law either for or against the procedure which the Debtor finds objectionable. Thus, this issue appears to be a matter of first impression for this Court.

The substance of Debtor's objection is that the creditors in interest were given ample opportunity to file a proof of claim by the original Bar Date, and any creditor's failure to do so should forever bar that creditor from sharing in the distribution of recovered assets, particularly since no new

assets were recovered after the Bar Date. Moreover, Debtor argues that the new claims would not have been filed had creditors not been prompted by the Trustee with the Second Notice of Assets.

As a threshold matter, any claims filed after the Bar Date must now be treated as tardily filed and paid in accordance with the priority scheme set forth in 11 U.S.C. § 726 (a) of the Bankruptcy Code unless otherwise disallowed. That said, Debtor has raised some very valid concerns.

Fed. R. Bankr. P. 3009 recognizes the creditors' right to payment of dividends "as promptly as practicable." A number of considerations may limit prompt distribution. This may include, *inter alia*, the number of creditors, whether or not the assets are liquidated, the time it takes to review the claims on file and make a determination of any objections, and the priority rank of certain creditors. *See Frostbaum v. Ochs (In re Samuel)*, 277 B.R. 470, 475 (E.D.N.Y. 2002); *see also In re Anderson*, 266 B.R. 498, 503 (Bankr. D. Kan. 2001).

11 U.S.C. § 704(1) imposes a duty on a trustee to close an estate "as expeditiously as is compatible with the best interest of parties in interest." Failure to do so may result in sanctions against the Trustee because "an unjustifiable delay on the part of a trustee in effecting a distribution prejudices the creditors, for rarely are there sufficient proceeds to compensate the creditors for the opportunity costs incurred in waiting years for their final distribution." *Frostbaum v. Ochs*, 277 B.R. at 476.

In this Court's view, the problem in this particular case is that creditors who timely filed proofs of claim did not see the prompt administration of the case for their benefit, and the Trustee has put forth no compelling reason why the first body of claims could not have been administered promptly after receipt of the second installment of funds in November, 2007. Neither Trustee's concern about the substantial sum being returned to the Debtor nor his desire for a higher Trustee fee constitute appropriate grounds for requesting additional proofs of claim. The Bankruptcy Code

makes provision for the return of funds to the Debtor after payment of all allowed claims. 11 U.S.C. § 726(a)(6).

It would be a different situation if no proofs of claim had been filed by the Bar Date, or if the Trustee was continuing to collect money or faced any other impediment to the expeditious administration of the estate. However, that is not the case here. In fact, to further exacerbate matters, Debtor's counsel specifically requested prompt administration after all estate funds were collected due to the degree of Debtor's financial hardship, but that did not take place.

### **CONCLUSION**

Accordingly, in consideration of the foregoing, the Court **HEREBY ORDERS** that this case be promptly administered without further delay. Also, the Trustee's fee shall be reduced and calculated based solely on the distributions made pursuant to the claims filed by the Bar Date.

Furthermore, the Court **HEREBY ORDERS** that effective immediately, the panel trustees in Akron must have Court approval before a supplemental notice of need to file proofs of claim will be issued to creditors by the Clerk of this Court in chapter 7 asset cases. Therefore, all requests by panel trustees for second notices of assets must be made by motion with an explanation of the circumstances warranting the issuance of a supplemental notice to creditors; all such motions will be put on the Court's hearings calendar. If the request for second notice is not accompanied by an explanation, it will be denied.

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cc: (via electronic mail and regular US mail)

Richard A. Wilson, Panel Trustee  
Marc P. Gertz, Panel Trustee  
Harold A. Corzin, Panel Trustee  
Robert S. Thomas II, Panel Trustee  
Kathryn A. Belfance, Panel Trustee

cc: (via electronic mail)

Gregory L. Hail, counsel for Debtor