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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
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NORTHERN DISTRICT OF OHIO  
CLEVELAND

In re: ) Case No. 97-18776  
)  
ALI N. JAFFRY, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **MEMORANDUM OF OPINION**

Creditor Sohail Siddiqi filed a claim to recover \$25,000 he claims to have loaned to the Debtor. The Chapter 7 Trustee objected to the claim by challenging whether money was loaned and, if so, whether it was loaned to the Debtor or a corporation. Mr. Siddiqi responded to the Objection. (Docket 25, 30). For the reasons stated below, the Trustee's Objection is sustained.

**JURISDICTION**

This Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

**FACTS**

This Chapter 7 case was filed on December 18, 1997. The Debtor did not schedule Mr. Siddiqi as a creditor in the bankruptcy filing. Mr. Siddiqi, however, filed a general unsecured claim in the amount of \$25,000 for money he asserts he loaned to the Debtor.

The Court held an evidentiary hearing on the Trustee's Objection. The only witness was Mr. Siddiqi, who testified to these events:

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Background: Mr. Siddiqi was born in Pakistan and has lived in the United States for nine years. He met the Debtor about six years ago when they both lived in New York and became very good friends. Mr. Siddiqi is married and currently works as a carpenter earning \$60,000 annually. He does not own a home. He does, however, own a car. Mr. Siddiqi has a cultural preference for handling matters without documentation and for dealing in cash. Despite that, he has maintained a checking and a savings account since 1994 and has a total of approximately \$12,000 in those accounts. Additionally, he has about \$2,000 in cash at home. He has credit cards issued by ten different banks.

The basis for his claim:

Mr. Siddiqi testified that he loaned \$25,000 to the Debtor in three separate cash payments between November of 1995 and April of 1996 (the "Loan"). He does not remember the dates of the payments. He made the Loan to the Debtor based on their long-standing friendship and was not certain why the Debtor needed the money or exactly what he intended to use it for. The Debtor requested a loan of \$40,000, but Mr. Siddiqi could not loan him that amount. The parties did not document the Loan at the time it was made. Mr. Siddiqi testified that he made the three payments in this fashion:

1. Mr. Siddiqi gave the Debtor the first cash payment of \$18,000 in November 1995. These funds were the proceeds from the sale of Mr. Siddiqi's house. He received a certified check in that amount from the sale, cashed the check, and gave the cash to the Debtor the next day. Mr. Siddiqi introduced closing documents supporting his contention that he sold real estate for a purchase price of \$18,000, but the documentation shows that he realized only \$17,624.50

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from the sale after various credits were applied. (Claimant Exh. 3.1). He did not introduce any documentation regarding the claimed payment of \$18,000 cash to the Debtor.

2. Mr. Siddiqi next gave the Debtor \$6,000 in cash in February 1996. The source of this payment was a savings account. Mr. Siddiqi did not introduce any evidence to substantiate that he had withdrawn this amount of money from his savings account.

3. The last cash payment of \$3,000 was made in April 1996. Mr. Siddiqi characterized this amount as a loan, but at the same time he stated that \$2,000 of this payment was a gift to the Debtor for his daughter's wedding. Mr. Siddiqi drew the funds from his savings account, but again he did not introduce any evidence to indicate that he had made such a withdrawal.

Mr. Siddiqi did not provide any information about the terms under which the Loan was to be repaid. He stated that he asked the Debtor to repay it several times, but to no avail. When Mr. Siddiqi learned of the Debtor's bankruptcy filing from an acquaintance, he went to see the Debtor and asked about the Loan. During the visit, he requested a written acknowledgment of the Loan and was given this notarized statement dated June 30, 1998:

I, Ali N. Jaffry , hereby acknowledge under oath that on April 10, 1996 I borrowed \$25,000,00 [sic] from Sohail Siddiqi for the operation of my 7-Eleven store at 998 Broadhead Road, Moon Township, PA 15108.

I further acknowledge that as of this date, this debt remains unsatisfied and that the entier [sic] \$25,000,00 [sic] remains due and owing to Sohail Siddiqi.

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The statement is attached to the Proof of Claim. Despite having given this statement post-petition, the Debtor has never amended his bankruptcy schedules to include any debt to Mr. Siddiqi.

**DISCUSSION**

**I.**

The Trustee objects to Mr. Siddiqi's claim arguing that (a) it is not a valid debt because the money was not loaned; or alternatively, (b) if it is a valid debt, it is a corporate debt rather than one owed by the Debtor personally. Mr. Siddiqi's position is that he loaned \$25,000 to the Debtor and his claim should be allowed.

**II.**

A filed claim is deemed allowed under 11 U.S.C. § 502(a) unless a party in interest objects. If an objection is filed, "[a] proof of claim executed and filed in accordance with [the bankruptcy] rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). The objecting party bears the initial burden of rebutting this prima facie validity. That requires the objector to provide "evidence equal in probative force to that underlying the proof of claim." *Fullmer v. United States (In re Fullmer)*, 962 F.2d 1463, 1466 (10<sup>th</sup> Cir. 1992). If the objector does so, then the claimant has the ultimate burden of proving the validity and amount of his claim by a preponderance of the evidence. *In re Allegheny Int'l Inc.*, 954 F.2d 167 (3d Cir. 1992); *In re Nelson*, 206 B.R. 869 (Bankr. N.D. Ohio 1997). Cf. *Grogan v. Garner*, 498 U.S. 279 (1991). On the evidence presented, the Trustee introduced sufficient evidence to rebut the prima facie validity of Mr. Siddiqi's proof of claim and Mr. Siddiqi has not met his burden of proving the validity of his claim.

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Mr. Siddiqi's claim is based on a personal loan which he made to the Debtor. To support this claim, he has attached to his proof of claim a written post-petition acknowledgment of the Loan by the Debtor. The Debtor, however, did not schedule the debt when he filed this case, does not explain his failure to schedule the debt in the acknowledgment, and has not amended his bankruptcy filing to include this debt. Moreover, the Debtor's written acknowledgment is inconsistent with Mr. Siddiqi's account of the Loan. The acknowledgment states that a \$25,000 loan was made on April 10, 1996, with the funds being borrowed to operate the Debtor's convenience store. Mr. Siddiqi, on the other hand, testified that the \$25,000 was given to the Debtor in three separate payments from November 1995 to April 1996 and that he was not aware of what the money would be used for. Under these facts, the Trustee clearly rebutted the prima facie validity of Mr. Siddiqi's claim.

The Court turns then to consider whether Mr. Siddiqi proved his claim by a preponderance of the evidence. Mr. Siddiqi alleges that he is owed \$25,000 based on three cash payments which he made to the Debtor. He has no contemporaneous loan documentation and no proof that he made those payments. His cultural preference for dealing in cash does not adequately explain this absence of documentation, particularly since he does maintain bank accounts and credit cards.

Additionally, Mr. Siddiqi's testimony regarding the Loan is incomplete and inconsistent in these respects: Mr. Siddiqi could not remember the dates on which the cash payments were given to the Debtor. He testified that he made an \$18,000 cash payment to the Debtor in November of 1995 from the proceeds of his sale of real estate. The evidence, however, indicates that he received less than \$18,000 from the sale. This discrepancy was never addressed or

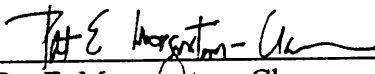
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explained. Mr. Siddiqi also testified that he made two cash payments to the Debtor from funds in his savings account. He did not provide any evidence that he had withdrawn those amounts from his account. His testimony regarding the last payment of \$3,000 was also inconsistent. He stated that the entire payment was a loan, and he also stated that the payment was a loan of \$1,000 and a gift of \$2,000. Finally, Mr. Siddiqi argues that the Debtor's post-petition acknowledgment of the Loan supports his claim. He fails, however, to explain the discrepancies between his version of the Loan and that set forth in the acknowledgment. Because of the incomplete and inconsistent testimony, Mr. Siddiqi's testimony was not credible. Under these facts, Mr. Siddiqi has not proven his claim.

CONCLUSION

For the reasons stated, the Trustee's Objection to Claim No. 7 filed by Sohail Siddiqi is sustained and that claim is disallowed. A separate Order will be entered in accordance with this decision.

Date: 25 Nov 1998

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Marvin Sicherman, Esq.  
J. Peter Parrish, Esq.

By: Joyce L. Gordon, Secretary

Date: 11/25/98

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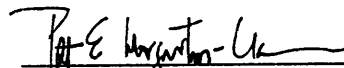
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In re: ) Case No. 97-18776  
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ALI N. JAFFRY, ) Chapter 7  
)  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
)  
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this date,

IT IS ORDERED that the Trustee's Objection to Claim No. 7 filed by Sohail Siddiqi is  
sustained and that Claim is disallowed.

Date: 25 Nov 1998

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

Served by mail on: Marvin Sicherman, Esq.  
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