

DOCKET NUMBER: 95-10980

ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Larry Joseph Richardson, Jr., Laura Lee Richardson

CHAPTER: 7

ATTORNEYS: F. L. Thiemonge, III

DATE: 4/29/97

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

LARRY JOSEPH RICHARDSON, JR.
LAURA LEE RICHARDSON

Case No. 95-10980-MAM-7

Debtors.

**ORDER DENYING MOTION OF DEBTORS FOR
RETURN OF FUNDS BY CHAPTER 13 TRUSTEE**

Frank L. Thiemonge, III, Mobile, AL, Attorney for the Debtors
John C. McAleer, III, Mobile, AL, Chapter 13 Trustee

This case is before the Court on the Debtors' motion for return of funds held by the Chapter 13 Trustee after the case's conversion to Chapter 7. A hearing was held. Appearances were as noted in the record. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is denying the motion for return of funds.

FACTS

The Debtors filed this case as a Chapter 13 bankruptcy case on April 28, 1995. Their Chapter 13 plan was confirmed on August 29, 1995. On February 3, 1997, the Debtors filed a Notice of Conversion of their case to one under Chapter 7. On February 6, 1997, the Court signed an order entitled "Order and Notice of Conversion of Case From Chapter 13 to Chapter 7." The order stated, inter alia, "[T]he Chapter 13 Trustee shall pay to the Clerk some or all of the \$15.00 in filing fees and costs remaining unpaid from any monies he has on hand before disbursing to the Debtors or the Chapter 7 Trustee."

The Debtors' last payment of \$552 to the Chapter 13 Trustee was received by the Trustee on February 4, 1997. He disbursed the monies to creditors pursuant to the confirmed Chapter 13 plan on February 19, 1997. The Debtors claimed the \$552 as part of their exempt personal property in their Chapter 7 schedules.

The Chapter 13 Trustee disbursed the funds to creditors on the basis of procedures approved by the Court for the Chapter 13 Trustee which provided:

CASES CONVERTED TO CHAPTER 7 AFTER CONFIRMATION: Funds on hand will be disbursed to the creditors if payments are received prior to the conversion order. If payments are received after the order, funds on hand will be disbursed to the Chapter 7 Trustee.

LAW

There are two different opinions as to the proper treatment of undistributed funds in the hands of the Chapter 13 Trustee at the time of a conversion of the case to Chapter 7. One theory holds that the funds should be remitted to the Debtor. *In re Tracy*, 28 B.R. 189 (Bankr. D. Me. 1983); *In re Gillen*, 69 B.R. 255 (E.D. Pa. 1986); *In re Nash*, 765 F.2d 1410 (9th Cir. 1985); *In re Luna*, 73 B.R. 999 (N.D. Ill. 1987). The other holds that the funds should be distributed by the Chapter 13 Trustee to the creditors specified under the confirmed Chapter 13 plan. *In re Halpenny*, 125 B.R. 814 (Bankr. D. Haw. 1991); *In re Galloway*, 134 B.R. 602 (Bankr. W.D. Ky. 1991); *In re Leonard*, 150 B.R. 709 (Bankr. W.D. Ark. 1992); *In re Hardin*, 200 B.R. 312 (Bankr. E.D. Ky. 1996).

After a review of both lines of authority, the Court believes that the *Hardin* line of cases which holds that the Chapter 13 Trustee must distribute the funds held to the creditors under the confirmed plan is the correct view. The Court will not recite the reasoning of the *Hardin* case. The Court incorporates it by reference. Therefore, the Chapter 13 Trustee acted appropriately in

distributing funds which came into his hands before the conversion to the creditors. “If a plan is confirmed, the trustee shall distribute any [plan] payment in accordance with the plan.”

11 U.S.C. § 1326(a)(2).

The Court’s order of conversion is not a model of clarity. The monies a Chapter 13 trustee has “on hand” would be any funds mistakenly remitted to him by a debtor or a debtor’s employer after conversion. Funds received from a debtor or a debtor’s employer before conversion, such as in this case, are not “on hand”; they are dedicated to the creditors pursuant to 11 U.S.C. § 1326(a)(2).

THEREFORE IT IS ORDERED that the Debtor’s Motion for return of funds by Chapter 13 Trustee is DENIED.

Dated: April 29, 1997

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE