

2002 WL 1770767

United States Bankruptcy Court, S.D. Alabama.

In re: Alice Sharon ROBERTS Debtor

No. 01-14849-13.

June 18, 2002.

*ORDER ON TRUSTEE'S TO
MOTION FOR INSTRUCTION*

MAHONEY, Chief Bankruptcy J.

*1 The standing Chapter 13 trustee has filed Motion For Instruction in regard to a United States Internal Revenue Service levy served on him after this case was dismissed.

FACTS

Debtor filed this case on September 24, 2001. The United States Internal Revenue Service filed a proof of claim showing a secured claim of \$227,961.05. On March 7, 2002, the Court entered its Order on Dismissal of Chapter 13 Case. On March 28, 2002, the Court denied Debtor's motion to alter or amend. The Standing Chapter 13 Trustee states that he is holding \$13,271.25. The Chapter 13 Trustee was served with a [26 U.S.C. § 6331](#) Notice of Levy after this case was dismissed.

LAW

“The Internal Revenue Service is empowered to levy on the property of a tax delinquent in the hands of a third party by [26 U.S.C. § 6331](#)....Upon receipt of a notice of levy, such

third parties are required to surrender that property to the I.R.S.” [United States v. Ruff](#), 99 F.3d 1559, 1563 (1996). *Ruff* held that a Chapter 7 Trustee who had failed to honor a levy, instead paying the funds to an administrative claimant, was personally liable to the Government for the property not surrendered. [Ruff](#), 99 F.3d at 1567. *Ruff* went on to hold a contrary case from this District, [In re Ceafco](#), No. 28,700, 1977 WL 1273 (S.D.Ala. Sept. 21, 1977), to have been wrongly decided.

Ruff has been applied to require a Chapter 13 Trustee to honor a [Title 26](#) Notice of Levy. [In re Mishler](#), 223 B.R. 17, 19-20 (Bankr.M.D.Fla.1998). This requirement applies notwithstanding language in [11 U.S.C. § 1326\(a\)](#) calling for return of funds to the debtor. [Mishler](#), 223 B.R. at 20; [In re Schlapper](#), 195 B.R. 805, 806 (Bankr.M.D.Fla.1996). This Court has followed the logic of *Schlapper* in a case affirmed by the District Court and Court of Appeals. *In re Kiper*, Case No. 98-14655-WSS-13 (April 26, 2000) at 5, *aff'd*, *In re Kiper*, Case No. 00-670-BJ-L (September 26, 2000), *aff'd*, *Kiper v. McAleer*, No. 00-15595 (July 5, 2001).

The Court of Appeals decision in [Ruff](#), 99 F.3d 1559, and the decisions of the District Court and Court of Appeals in *Kiper*, are binding precedent. [United States v. Chila](#), 871 F.2d 1015, 1018 (11th Cir.1989), *cert. denied*, 493 U.S. 498.

The Trustee is instructed to follow the command of [26 U.S.C. § 6331](#) and hand over all funds remaining after his administrative expenses to the counsel for the United States.

All Citations

Not Reported in B.R., 2002 WL 1770767, 90 A.F.T.R.2d 2002-5227, 2002-2 USTC P 50,547