

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DONALD W. STEINKE and MARY V.
STEINKE
Debtors.

Bankruptcy No. 93-51968XS

Chapter 7

ORDER RE: OBJECTION TO EXEMPTIONS

The matter before the court is the trustee's objection to Steinkes' claims of exemption in two life insurance policies. Hearing was held March 29, 1994 in Sioux City, Iowa. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(B).

Findings of Fact

The Steinkes filed a chapter 7 bankruptcy petition on December 7, 1993. The Steinkes listed on their schedule of personal property an interest in two insurance policies. They claim the cash value of Mary Steinke's policy is \$9,321.00. Donald Steinke's policy is listed as having a cash value of \$18,490.00. It appears that this is a typographical error and that the Steinkes intended to claim an exempt value of \$8,490.00 for Donald Steinke's policy. They claim the total cash value for the two policies is \$17,811.00.

The Steinkes made application for the insurance policies on November 3, 1993 (exhibits B-F, H-I). The policies were described as single premium universal life policies. The Steinkes paid the premiums with two checks dated November 3, 1993, each in the amount of \$10,000.00 written on Mary Steinke's "financial management account" with Shearson, Lehman Bros. (exhibits 1, G, J). The policies were issued December 27, 1993. The Steinkes named each other as beneficiaries of the policies (exhibits 2, 3). On November 3, 1993, the Steinkes each received a Conditional Receipt in the form submitted as exhibit M. The Conditional Receipt states:

1. NO COVERAGE WILL BECOME EFFECTIVE PRIOR TO DELIVERY OF THE POLICY APPLIED FOR UNLESS AND UNTIL ALL THE CONDITIONS OF THIS RECEIPT HAVE BEEN FULFILLED EXACTLY:
 - a. The amount of payment taken with the application must be at least equal to the amount of the full first premium for the mode of payment selected in the application and for the amount of insurance which may become effective prior to delivery of the policy.
 - b. All medical examinations, test, x-rays and electrocardiograms required by the Company must be completed and received at its National Service Center

in Minneapolis, Minnesota within 60 days from the date of completion of Part 1 of this application.

- c. As of the effective date, as defined below, each person proposed for insurance in this application must be a risk insurable in accordance with the Company's rules, limits, and standards for the plan and the amount applied for without any modification either as to plan, amount, riders and/or the rate of premium paid.
 - d. As of the effective date, the state of health and all factors affecting the insurability of each and every person proposed for insurance must be as stated in the application.
2. Subject to the conditions of paragraph 1, insurance, as provided by the terms and conditions of the policy applied for and in use on the effective date, but for an amount not exceeding that specified in paragraph 3, will become effective as of the effective date. "Effective date", as used herein, is the later of: (a) the date of completion of Part 1 of the application, or (b) the date of completion of all medical examinations, tests, x-rays and electrocardiograms required by the Company. The effective date is determined separately for each person proposed for coverage.

* * *

4. If one or more of the conditions of paragraph 1 have not been fulfilled exactly, there shall be no liability on the part of the Company except to return the applicable payment in exchange for this Receipt.

* * *

If all the conditions are not fulfilled exactly, the insurance will take effect when the policy is delivered to the owner stated in the application; but only if at the time of such delivery there has been no change in insurability as represented in the application.

Exhibit M (emphasis in the original).

Discussion

The Steinkes claim their interest in the policies exempt pursuant to Iowa Code § 627.6(6) which allows a debtor to exempt:

[t]he interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a life insurance policy owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent.

Iowa Code § 627.6(6). In In re Buffinton, 100 B.R. 448, 450 (Bankr. N.D. Iowa 1987), the court discussed the definition of a life insurance policy. The court stated:

Normally, insurance is considered to be a contract by which one party, for compensation called a premium, assumes particular risks of the other party and promises to pay him or his nominee a certain ascertainable sum of money on a specified contingency.

Id., citing State v. Timmer, 260 Iowa 993, 151 N.W.2d 558, 561 (1967). Following this definition, a person with an effective contract for life insurance coverage would have an interest in a life insurance policy within the meaning of Iowa Code § 627.6(6). Generally, an application for life insurance is only an offer to buy insurance, and the life insurance contract is not effective until the application has been accepted by the insurance company. Beyer v. Central Life Ins. Co., 199 Iowa 245, 201 N.W. 577, 578 (1925); Kimbrow v. New York Life Ins. Co., 134 Iowa 84, 108 N.W. 1025, 1027 (1906). "The issuance and manual delivery of a written policy is not ordinarily essential to a contract of insurance." Kimbrow, 108 N.W. at 1027.

The trustee argues that because the issuance of the policies was subject to certain conditions, the Steinkes did not have a contract of insurance on the date of the petition, and therefore, may not claim the policies exempt. The policies themselves were not offered in evidence. Exhibits 2 and 3 indicate the "issue date" of the policies but do not indicate when they became effective. Paragraph 1 of the Conditional Receipt provides that the Steinkes could have had effective insurance coverage prior to delivery of the policy upon meeting the four stated conditions. Paragraph 2 of the Conditional Receipt states that if the conditions are met, the "effective date" of insurance is the later of the date of the application for insurance or completion of all required medical examinations. The evidence does not reveal when the medical exams were completed. If the Steinkes completed the medical exams on the same date as the applications or at any time prior to the bankruptcy filing date, it appears they would have had effective insurance policies on the date of their petition.

The trustee bears the burden of proving that the Steinkes' exemptions are not properly claimed. Fed.R.Bankr.P. 4003(c). The trustee has failed to show that the Steinkes did not meet the four conditions for effective insurance coverage prior to the bankruptcy filing. Therefore, the trustee's objection will be overruled.

ORDER

IT IS ORDERED that the trustee's objection to the Steinkes' claim of exemptions in life insurance policies is overruled. Judgment shall enter accordingly.

SO ORDERED THIS 13th DAY OF APRIL, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U. S. mail to: Alvin J. Ford, Donald Molstad, 2002 List and U. S. Trustee.