

In the United States Bankruptcy Court

for the Northern District of Iowa

JOHN F. CAREY
CHERYL A. CAREY
Debtors.

Bankruptcy No. L89-00564W

Chapter 7

ORDER

On July 21, 1994, the above-captioned matter came on for hearing pursuant to assignment. Set for hearing was a status conference re final report and all pending matters. John Schmillen appeared on behalf of the U.S. Trustee as Successor Trustee. Charles Mattson appeared for Debtors John and Cheryl Carey. Ana Maria Martel represented the Internal Revenue Service (IRS). Denise Dengler appeared for the Iowa Department of Revenue and Finance (DOR).

Trustee filed an Amended Final Report on April 8, 1994. It appears that more than \$21,473.78 remain in the estate payable to creditors. The final report proposes to pay this dividend to the IRS on its priority claim. The DOR filed a prompt objection asserting that it should share in the dividend because it also has a priority claim under 11 U.S.C. 507(a)(7).

The Court has reviewed DOR's objection and its claim, both filed April 29, 1994. The DOR appears to have a valid late-filed priority claim which should be allowed. The final report should be amended to treat DOR's claim as a priority claim and provide for distribution prorata with the IRS. The DOR's objection to the final report should be granted.

Debtors also object to the final report. They assert that their separate estates have differing liabilities on the IRS's priority claim. Cheryl Carey has applied to the IRS for innocent spouse treatment. She asserts that her estate should not be required to pay any dividend to the IRS. This Court has previously continued the hearing on the final report to await determination on the Innocent Spouse Application. At this time, such determination has not yet been made. Debtors continue to object to distribution pursuant to the final report until the Innocent Spouse Application issue with the IRS is resolved.

Bankruptcy Rule 3009 states that in a Chapter 7 case, "dividends to creditors shall be paid as promptly as practicable." Creditors who are entitled to dividends should have them and should not be deferred until the completion of controversies which are of no concern to the estate or to other creditors. In re Jackson Brewing Co., 567 F.2d 618, 621 n.14 (5th Cir. 1978). Debtors' objection to the final report rests on the eventuality of a favorable ruling by the IRS on Cheryl Carey's innocent spouse status. The Court concludes that awaiting the ruling would serve no purpose and the bankruptcy case should be finalized. Distribution should now be made subject to disgorgement should Cheryl Carey's Innocent Spouse Application succeed. The parties can resolve that dispute outside the bankruptcy arena.

WHEREFORE, the opposition of the Iowa Department of Revenue and Finance to the Trustee's Final Report and Account is GRANTED. Trustee shall amend the final report to provide for prorata distribution to DOR on its priority claim.

FURTHER, Debtors' Objections to Final Report of Trustee are DENIED.

SO ORDERED this 25th day of July, 1994.

Paul J. Kilburg, Judge
U.S. Bankruptcy Court