

In the United States Bankruptcy Court
for the Northern District of Iowa
Western Division

RANDAL J. STALEY and
PATRICIA A. STALEY

Bankruptcy No. 95-52448XS

Debtor(s).

Chapter 7

DECISION RE: TRUSTEE'S OBJECTION TO EXEMPTION

Trustee Wil L. Forker objects to Patricia Staley's claim of exemption in a life insurance policy.⁽¹⁾

Hearing was held on April 23, 1996 in Sioux City. Wil L. Forker appeared pro se. John Harmelink appeared for the debtors. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Findings

Patricia A. and Randal J. Staley filed their joint petition under chapter 7 on December 15, 1995. On their schedule of personal property, there was listed an interest in an insurance policy with North American Co. having a cash value of \$17,500.00 (docket no. 9, schedule B-9). The schedule did not specify who owned the policy. The cash surrender value of that policy and two others were claimed exempt as life insurance interests under Iowa Code § 627.6(6).

Patricia Staley held a beneficial interest in a trust established by her mother. Her interest was liquidated, and she received more than \$18,000.00. She decided to purchase life insurance. Attorney Harmelink referred her to Harvey Youngberg, an insurance agent in Yankton, South Dakota. Youngberg sold products issued by North American Company for Life and Health Insurance (COMPANY). She met with him first on or about December 11, 1995.

Before she filed bankruptcy, Mrs. Staley made two applications to Company--an "Application for Immediate Annuity Contract" and an "Application for Life Insurance" (exhibit 1). At or about the time she submitted her applications, she made arrangements to pay Youngberg \$18,662.46 in premiums. He received the money on December 12, 1995.

On February 1, 1996, Company issued two contracts for Mrs. Staley. One was annuity contract number A02281, under which Mrs. Staley was the owner and annuitant. The contract's single premium, which had been paid in advance, was \$13,790.01. Company agreed to make "FOUR (4) annual [annuity] payments of \$3,914.81 each, commencing with an initial payment on FEBRUARY 1, 1997 and ending with a final payment on FEBRUARY 1, 2000" (exhibit 1, "contract specifications"). The payments were to be made to "POLICY #L012427530" as payee. *Id.*

That policy number referred to a flexible premium adjustable life insurance policy issued on February 1, 1996 on the life of Mrs. Staley. The death benefit was \$150,000.00. Mrs. Staley was the owner; her minor sons were the primary beneficiaries. The contract appears to call for the payment of premiums over four years--an initial premium of \$4,869.99 and four equal annual premiums of \$3,914.81 which were payable on February 1 in 1997, 1998, 1999 and 2000. The money paid to Youngberg in December would have paid the initial premium.

According to the life policy, it would take effect as defined in the application for insurance (exhibit 1, policy, p. 15). Regarding effectiveness, the application stated:

It is agreed that: (1) This application shall consist of part I, one or more Parts II, and any attachments and shall be the basis for any policy issued on this application; (2) Except as otherwise provided in the receipt attached to this application, if issued, any policy issued on this application shall not take effect unless the following conditions are met: (a) the full first premium is paid; and (b) the policy is delivered to the owner during the lifetime of the person insured under that policy; and (c) all the statements and answers given in this application continue to be true and complete as of the date of delivery of the policy; and (3) No waiver or modification shall bind the Company unless in writing and signed by the President, a Vice President or Secretary of the Company.

(Exhibit 1, Application for Life Insurance, signature page (emphasis added)).

There was no receipt from Youngberg to Mrs. Staley attached to the application. The only receipt offered into evidence was one given to Mrs. Staley by Youngberg to acknowledge payment for the annuity contract (exhibit 1, Application . . . for Annuity). It does not deal with the effective date of the life policy.

Company transmitted the issued life policy to Youngberg on February 1, 1996, with instructions to deliver it to the owner by no later than March 17, 1996. Delivery was to be made only if the insured were living and in good health (exhibit 1, Policy Delivery Transmittal). Neither the life policy nor the annuity contract were ever delivered directly to Mrs. Staley. Sometime after February 1, 1996, at Mrs. Staley's request, Youngberg delivered the contracts to attorney Harmelink. He turned them over to the trustee for his examination. Mrs. Staley at all times believed that the "policy" was in effect on December 12, 1995 when she paid Youngberg. She says she understood this from the way Youngberg talked.

Discussion

Mrs. Staley believes she purchased a single premium life insurance policy on December 12, 1995 and that it became effective on that date. Actually, she had applied to purchase not only a life insurance policy, but also a single premium annuity contract, the payments from which would be used to pay four required life policy premiums from 1997 through 2000. In her schedules, Mrs. Staley listed the contracts as one policy and claimed it exempt as life insurance.

Iowa law provides for the exemption of various interests owned by an individual in a life insurance policy if the beneficiary is a spouse, child or dependent. Iowa Code § 627.6(6). Exemptible interests include, as claimed here, cash surrender value. *Id.* Although its purpose was to pay life insurance premiums, the annuity contract is not a life insurance contract. The Iowa Supreme Court has described the nature of life insurance.

Life insurance, of course, is ordinarily a contract whereby, for a specified premium to be paid in various ways, the insurance company agrees to pay a stated sum to designated beneficiaries in the event of death of the insured while the contract is in force. The amount of the premium to be paid is determined mathematically from certain established and recognized tables of mortality.

Prudential Ins. Co. of America v. Green, 231 Iowa 1371, 2 N.W.2d 765, 766-67 (1942).

An annuity, on the other hand, is generally defined as "any agreement which establishes a fixed sum payable at intervals or at some stated period." State ex rel. Hager v. Iowa Nat'l Mutual Ins. Co., 430 N.W.2d 420, 421 (Iowa 1988); accord American Bible Society v. Cameron (In re Johnson's Estate), 238 Iowa 1221, 30 N.W.2d 164, 167 (1947). Generally, annuities may be claimed exempt if the payment is on account of illness, disability, death, age, or length of service. Iowa Code § 627.6(8)(e).

There is nothing in the annuity contract purchased by Mrs. Staley which conditions payment on the death of anyone. Under the contract, the Company must pay fixed sums on the dates specified. That the payee is a life policy does not make the annuity contract a life insurance interest. As to Mrs. Staley's claim of exemption in the annuity contract as life insurance, the trustee's objection will be sustained. Debtor may perhaps contend that the annuity is exempt under Iowa Code § 627.6(8)(e), but that issue is not before the court.

Mrs. Staley did purchase a life insurance contract from Company. She paid an initial premium of \$4,869.99. The trustee contends the policy is not exempt because it was not in existence at filing. The life policy was issued February 1, 1996, after debtor's bankruptcy filing. It was not delivered until after that date, when it was delivered by Youngberg to attorney Harmelink.

Debtor says she understood from the way Youngberg talked that the policy was in effect when she paid the premium in December 1995. Yet she offers no proof of Youngberg's authority to bind the Company to immediate coverage at the time of the application. "A contract to issue a policy of insurance may be completed without the actual issuance and delivery of a policy." Beyer v. Central Life Ins. Co. of Illinois, 199 Iowa 245, 201 N.W. 577, 578 (1925); accord Kimbro v. New York Life Ins. Co., 134 Iowa 84, 108 N.W. 1025, 1027 (1906). An application for insurance is an offer. It alone is not given the effect of a contract. To treat the applicant as insured, the court must find as a matter of fact or conclusion of law that the offer was accepted. Id.

The only evidence of acceptance prior to bankruptcy is Mrs. Staley's understanding of her conversation with Youngberg. But the application signed by her contradicts her assertion of coverage. It provides that any policy issued on the application would not take effect unless, among certain conditions, the policy is delivered to the owner during the lifetime of the person insured. It appears that Company would make final delivery a condition of effective coverage under an issued policy and that it would only deliver the policy if the insured were living at the time of delivery. It might strike one as unfair that such policy might have been delivered as late as mid-March 1996, but only if the insured were alive, and yet a premium would be charged effective February 1. But yet, if the Company had issued the contract, as it did here, on February 1, it could negate coverage if the insured died after that date, but before delivery of the policy. In effect, the Company seems to enjoy the benefit of a premium for a short period during which it has no risk. I do not have to decide in this case whether coverage was effective on February 1 or on the date of delivery. Because there is a paucity of evidence as to representations by Youngberg on the effective date of coverage, and no other evidence supports an effective date earlier than February 1, 1996, I conclude that there was a contract of life insurance effective no earlier than February 1, 1996, after the debtor filed bankruptcy. On the date of filing, debtor merely had a pending offer for insurance supported by an advance premium if the offer were accepted. I conclude, therefore, that on the date of filing, Patricia Staley owned no interest in a life policy with Company which could be exempted under Iowa Code § 627.6(6). The trustee's objection should be sustained.

IT IS ORDERED that the trustee's objection to Patricia A. Staley's claim of exemption in the cash surrender value of a life insurance policy with North American Company for Life and Health Insurance is sustained. The claim of exemption is denied.

IT IS FURTHER ORDERED that the trustee's objection to the debtors' claim of exemption in disposable earnings is sustained. The claim of exemption is denied.

SO ORDERED THIS 29th DAY OF APRIL 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to: John Harmelink, Debtors, John Moeller, Wil Forker, Cynthia Moser and U. S. Trustee.

1. Trustee objects also to debtors' claim of exemption of \$1,590.84 in "disposable earnings." At hearing, debtors' counsel stated there was no such asset which was owned by debtors. The court will sustain trustee's objection on the ground that there is no asset in the estate to support the claim of exemption.