

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
ASSOCIATED FERTILITY &) CASE NO. 09-13441
GYNECOLOGY, P.C.)
)
Debtor)

NOT FOR
PUBLICATION

DECISION AND ORDER
DENYING AMENDED MOTION FOR UNCLAIMED FUNDS

On June 30, 2016.

When the U.S. Department of Labor did not cash the check for its distribution from this chapter 7 case, the trustee deposited that money with the clerk of the court, as unclaimed funds. See, 11 U.S.C. § 347. The matter is before the court on the Department’s amended motion for payment of unclaimed funds. That, in itself, would not be exceptional. But, rather than having the money paid to it, the Department has asked the Clerk to divide it up and send it to three individuals. This prompted the court to set the motion for a hearing, and invite briefs, directed to the following issue:

Whether funds deposited with the Clerk of the Court can be paid to an entity other than the one for whom they were specifically deposited and, if so, under what circumstances. See, In re Chochos, 2007 WL 1810556 (Bankr. N.D. Ind. 2007); In re Applications for Unclaimed Funds, 341 B.R. 65 (Bankr. N.D. Ga. 2005).

Rather than address that issue, the Department’s brief argues that the trustee never should have distributed the funds to it in the first place. The argument ignores that fact that the Department identified itself as the “entity to whom the debtor owes money” in the proof of claim it filed. (It did not need to do so. If the Department was the authorized agent of the actual creditors, it could have executed the claim or claims on their behalf. See, Fed. R. Bankr. P. Rule 3001(b)). Furthermore, it did not object (and is not now objecting) to the trustee’s final report which proposed to make a distribution to the Department in the amount of \$1,185.58, and the trustee mailed that check

precisely where the claim directed (correctly the Department concedes), but it was returned and, ultimately, the funds in question were deposited with the court.

Funds deposited with the court may only be distributed to their “rightful owner,” 28 U.S.C. § 2041, and “only the creditor to whom distribution was to be made is the rightful owner of the unclaimed funds.” In re Rush Hampton Industries, Inc., 379 B.R. 192, 193 (Bankr. M.D. Fla. 2007). See also, In re Application For Unclaimed Funds, 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005) (“the ‘rightful owner’ of unclaimed funds paid into the court under § 347(a) is the holder of the proof of claim on account of which the trustee made the distribution.”); In re Chochos, 2007 WL 1810556 (Bankr. N.D. Ind. 2007). Cf. Bucher v. Vance, 36 F.2d 774 (7th Cir. 1929) (funds deposited with the court could not be seized creditors of the owner). Based upon the proof of claim it filed and the trustee’s approved distribution, the rightful owner of the funds in question is the Department of Labor. That is the creditor identified in the claim, the claimant to whom the trustee was authorized to make distribution, and the entity for whom the funds were deposited. Although the Department was asked and given the opportunity to explain how such funds “can be paid to an entity other than the one for whom they were specifically deposited and, if so, under what circumstances,” it did not do so. As a result, the court has been given no authority indicating whether or under what circumstances unclaimed funds can be so paid or, if such circumstances exist, how they may have been satisfied in this case. The motion is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court