

L. David Zube, Esq.
Chapter 7 Trustee
59 Court Street - 5th Floor
Binghamton, New York 13901

Myles R. Wren, Esq.
Nogi, Appleton, Weinberger & Wren, P.C.
Attorney for Debtor
415 Wyoming Avenue
Scranton, Pennsylvania 18503

Edward Y. Crossmore, Esq.
The Crossmore Law Office
Attorney for Mary Lou Stevens
115 West Green Street
Ithaca, NY 14850

Re: JOSEPH EDWARD HAIK
CASE NO. 01-60500

LETTER DECISION AND ORDER

On May 18, 2006, the Court heard oral argument on the motion filed by David Zube, Esq. on April 11, 2006, as chapter 7 trustee (“Trustee”) of the above-referenced case. The Trustee objected to the exemption claimed by Joseph Haick (“Debtor”) in disability benefits (the “Asset”) in his Amended Schedule C - Property Claimed as Exempt, filed on March 20, 2006. The grounds for the Trustee’s objection was the fact that the Asset was not originally listed in the Debtor’s Schedule B - Personal Property. In response to the Trustee’s motion, the Debtor filed an Amended Schedule of Personal Property on April 19, 2006, listing “Disability Benefits” in the amount of \$200,000.

At the hearing on May 18, 2006, the Trustee indicated that even if the disability benefits had

been listed as an asset in 2001 when the Debtor first filed his petition, the Trustee would not have objected to their exemption. The Trustee, however, directed the Court to an Order, signed on September 2, 2005, which approved a Stipulation, dated August 9, 2005, between the Trustee and Peter A. Orville, Esq, then the attorney for Mary Lou Stevens (“Stevens”), the Debtor’s former wife and a creditor of the Debtor.

The Court notes that according to the proof of claim filed by Stevens on October 15, 2002, she listed a priority claim of \$343,000 and an unsecured claim of \$178,000. Under the terms of the Stipulation, Stevens agreed to limit her priority claim for alimony or maintenance to \$50,000, while retaining her general unsecured claim of \$178,000, for the purpose of distribution by the Trustee. At the time, it was estimated that there would be approximately \$215,000 available in the bankruptcy estate for distribution to creditors. According to the Stipulation, the settlement of an adversary proceeding commenced by the Trustee against the Debtor and Stevens was intended to “ensure that unsecured creditors receive some dividend”

At the time of oral argument on the Trustee’s motion, the Court also had under consideration a motion filed by Stevens by way of Order to Show Cause, dated March 23, 2006, objecting to the Debtor’s claim of exemption in the Asset. Following oral argument on May 18, 2006, the Court granted Stevens’ motion based on a finding that allowing the Debtor to exempt the Asset some five years after filing his Petition would be prejudicial to her, particularly in light of the Stipulation executed in August 2005 in which she agreed to reduce her priority unsecured claim. The Court signed an Order on June 6, 2006, to that effect.

At the time of the hearing, the Court indicated to the parties that it would examine the facts of this case before making a ruling on the Trustee’s objection to the Debtor’s claim of exemption

in the Asset because of concerns that denying the objection might appear inconsistent with its Order of June 6, 2006.

After having considered the matter, the Court concludes that it will deny the Trustee's objection based on a finding that there will be no prejudice to the estate if the exemption is allowed. This conclusion is reached based in large part on the terms of the Stipulation which provided for a carveout for the general unsecured creditors of approximately \$215,000. Absent the Stipulation, arguably the general unsecured creditors would receive nothing given the amount of Stevens' alleged priority claim of \$343,000, which she had agreed to reduce to \$50,000. In addition, the substance of the Trustee's objection was based on a technicality, which was cured by the Debtor when he amended Schedule B to list the disability benefits as an asset of the estate. There is also the fact that no other creditors have objected to the Debtor's exemption claim since April 19, 2006. Under the circumstances, the Court believes that allowing the Debtor's claim of exemption is not inconsistent with its prior finding in favor of Stevens, which was memorialized in its Order of June 6, 2006.

IT IS SO ORDERED

Dated at Utica, New York

this 26th day of October 2006

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge