UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

HAROLD DUBROFF — CASE NO. 94-10025

Debtor

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION,
CONCLUSIONS OF LAW AND ORDER

The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code (11 U.S.C. §§101-1330) on January 5, 1994. Included on the Debtor's claim of exempt property (Schedule C) is the Debtor's interest in an individual retirement account ("IRA") valued at $43,974. By this Court's Order of March 18, 1994, creditor First National Bank of Glens Falls ("Bank") and the Chapter 7 Trustee ("Trustee") were granted an extension until May 16, 1994 within which to object to the Debtor's exemptions. The Bank objected to the Debtor's claimed exemption in the IRA on May

13, 1994. (C.P. No 34). The Trustee filed a separate timely objection on May 16, 1994. (C.P. No. 36). [1] The parties have agreed that the issue presented is one of law and may be decided by the Court on the basis of the submitted pleadings and memoranda.[2]

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§1334(b), 157(a), (b)(1), and (2)(B).

ARGUMENTS

The Bank and the Trustee have the burden of proof on their objection to the claimed exemption pursuant to Federal Rule of Bankruptcy Procedure 4003(c). In re Woodford, 73 B.R. 675, 679 (Bankr. N.D.N.Y. 1987). The parties agree that resolution of the present dispute turns on an interpretation of the governing state statute applicable on the date that the petition was filed. See In re Fill, 84 B.R. 332, 337 (Bankr. S.D.N.Y. 1988).

The Debtor bases his entitlement to the exemption on New York's Debtor and Creditor Law §282 which sets forth the permissible exemptions available to a Debtor filing bankruptcy in

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[1] The Trustee objected to the value of the debtor's claimed exemption in personal property and to the exempt status of the IRA. The Trustee has since settled the first part of his objection and only the exempt status of the IRA remains at issue.

[2] This contested matter was transferred to the U.S. Bankruptcy Court at Utica, New York for decision following the death of the Honorable Justin J. Mahoney on June 10, 1994.

the State of New York. After recognizing an exemption in the same real and personal property that would be exempt from satisfaction of a money judgment under New York's Civil Practice Law and Rules ("NYCPLR") §5205 and §5206, the statute, in pertinent part, exempts the following additional property:

> The debtor's right to receive or the debtor's interest in: ... (e) all payments under a stock bonus, pension, profit sharing, or **similar plan or contract** on account of illness, disability, death, age, or length of service unless (i) such plan or contract, except those qualified under section 401 of the United States Internal Revenue Code of 1986..., was established by the debtor or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose, (ii) such plan is on account of age or length of service, and (iii) **such plan or contract** does not qualify under section four hundred one a, four hundred three a, four hundred three b, **four hundred eight**, four hundred nine or four hundred fifty seven of the Internal Revenue Code of nineteen hundred eighty-six, as amended.[3]

(emphasis supplied) New York Debtor and Creditor Law §282(2)(e) (McKinney's Consolidated Laws of New York 1990).

In support of its objection that an IRA is not a "similar plan or contract" that can be exempted under the foregoing section, the Bank relies upon the reasoning and holdings of bankruptcy courts in New York so interpreting §282 of the New York Debtor and Creditor Law. In re Iacono, 120 B.R. 691 (Bankr. E.D.N.Y. 1990); In re Kramer, 128 B.R. 707 (Bankr. E.D.N.Y. 1991); and In re Orlebeke, 141 B.R. 569 (Bankr. S.D.N.Y. 1992). See also In re Morgan, 145 B.R. 760, 763 (Bankr. N.D.N.Y. 1992).

The Debtor contends that the reasoning in the foregoing

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[3] 26 U.S.C. §§401a, 403a, 403b, 408, 409, 457.

cases is flawed. The Debtor points to cases interpreting the nearly identical language of 11 U.S.C. §522(d)(10)(E), upon which §282 of the New York Debtor and Creditor Law is based, holding that IRAs are exempt, most notably In re Hall, 151 B.R. 412 (Bankr. W.D.Mich. 1993). See also In re Link, 172 B.R. 707 (Bankr. D.Mass. 1994).

DISCUSSION

Upon a careful review of the cases cited by both parties and the issues raised in the respective memoranda (C.P. Nos. 35, 45, 56, 52), the Court concurs with the Debtor's position and finds that the Debtor's claim to an exemption in the IRA is proper.

The Court is persuaded that the language of Debtor and Creditor Law §282 itself, particularly the language emphasized in the quoted text above, discloses a clear intent to include individual retirement accounts as "similar plans or contracts" under this section. The reference, in §282(e)(iii), to section 408 of the Internal Revenue Code - which pertains solely to individual retirement plans (defined to include individual retirement accounts and individual retirement annuities) - would be illogical in carving out the exception if the exact type of investment were to be excluded from the general provision, "similar plan or contract". See In re Hall, supra 151 B.R. 426.

Although 11 U.S.C. §522(d)(10)(E) is not applicable in New York, the Court rejects the Bank's position that cases interpreting the nearly identical language contained in that provision should

not be consulted nor be persuasive in interpreting the applicable New York provision. This Court has previously looked to and considered cases involving the federal counterpart, 11 U.S.C. §522(d)(10)(E), in interpreting New York Debtor and Creditor Law §282(2)(e). See In re Kleist, 114 B.R. 366, 368, (Bankr. N.D.N.Y. 1990). And, while not controlling on the issue before the Court, the recognition by the U.S. Supreme Court in Patterson v. Shumate, __U.S.___(1992), 112 S.Ct. 2242, 119 L.Ed. 2d 519, albeit in dicta, that §522(d)(10)(E) exempts from the bankruptcy estate a much broader category of interests than §541(c)(2) excludes, specifically, "pension plans that qualify for preferential tax treatment under 26 U.S.C. §408 (individual retirement accounts)", lends strong support for the Debtor's position and this Court's conclusion.

The Bank argues that "the fundamental problem with the Debtor's scholarly argument is that the Debtor ignores the concept of "stare decisis". (C.P. No. 52 at page 1).

Stare decisis is the doctrine that when a court has once laid down a principle of law, it will adhere to that principle and apply it to all future cases. Moore v. City of Albany, 98 N.Y. 396, 410. As a general rule, the doctrine is not binding, but is one of policy based on the theory that security and certainty require that established legal principles be recognized and followed. Black's Law Dictionary (Revised 4th Ed.).

The case precedents relied upon by the Bank and the Trustee do not involve state court pronouncements of the construction of a state statute which could constitute binding

precedent on a federal court faced with the same issue. See Kehaya v. Axton, (D.C.N.Y. 1940), 32 F. Supp. 266, 268. The cases relied upon are bankruptcy court decisions which, although persuasive, are not binding on this Court.

Whether a prior holding should be adhered to under principles of stare decisis is clearly within a Court's sound discretion. Under an amendment to NYCPLR §5205(c), adopted by the New York Legislature on May 31, 1994 (L. 1994, c. 127), which became effective September 1, 1994, IRAs are now accorded the irrebuttable presumption of being spendthrift trusts and are exempt from the reach of attaching creditors in a non-bankruptcy context. This statute is, obviously, of no avail to the present Debtor who filed for bankruptcy eight months prior to its effective date. However, it is relevant in forming this Court's judgment as to the appropriateness of departing from the doctrine of stare decisis when concluding that the prior precedent is not legally sound.[4]

Since the New York Legislature has pronounced IRAs exempt under the separate provision of NYCPLR §5205(c), the present issue is not likely to arise again and the Court is free to correctly decide the issue without concern that uncertainty will result.

For the foregoing reasons, the Court rejects the Bank's objection and the Trustee's objection to the Debtor's claimed

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[4] The Bank asserts that the recent amendment to NYCPLR 5205(c) conclusively establishes that prior to September 1, 1994, IRAs were not exempt, however, as Debtor points out in his Reply Memorandum, that the Committee on Civil Practice Law and Rules of the New York State Bar Association in supporting the CPLR amendment indicates that it was necessary to bring NYCPLR 5205(c) in line with §282(2)(e)(iii) of the Debtor and Creditor Law which the legislative committee already believed exempted IRAs in a federal bankruptcy setting.

exemption and the exemption is allowed.

IT IS SO ORDERED.

Dated at Utica, New York

this day of 1995

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge