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Re: William I. Hill
Case No. 97-66127

LETTER DECISION AND ORDER

The chapter 7 trustee, Michael Balanoff, Esq. ("Trustee") has objected to the claim of an exemption in two mutual funds in the amount of $1,000 each by William I. Hill ("Debtor"). On January 5, 1998, the Debtor filed an affidavit in response to the Trustee's objection, asking the Court to exempt the $2,000 as representing cash on deposit in state or federally chartered depository institutions. The Debtor argues that the funds are readily available to him for his personal use at any time without penalty upon withdrawal. The Debtor points out that § 283(2) of the New York Debtor & Creditor Law ("NYD&CL") does not specify what constitutes a "state or federally chartered depository institution" in defining "cash" for exemption purposes. The Debtor would have the Court conclude that American Century and PBHG Funds, Inc., which hold the $2,000 in mutual funds, are chartered depository institutions.

NYD&CL § 283 allows a debtor to exempt up to $5,000 in personal property from the estate. *See In re Taft*, 184 B.R. 189, 192 (E.D.N.Y. 1995). If the value of the personal property is less than

$5,000, the statute allows the debtor to "exempt cash in the amount by which five thousand dollars exceeds the aggregate of his exemptions . . . or in the amount of two thousand five hundred dollars, whichever is less." *See* NYD&CL § 283(2)(c).

The statute defines "cash" as "currency of the United States at face value, savings bonds of the United States at face value, the right to receive a refund of federal, state and local income taxes, and *deposit accounts in any state or federally chartered depository institution." See* NYD&CL § 283(2) (emphasis added). The Debtor correctly points out that the term "depository institution" is not defined in NYD&CL § 283. According to United States Code, a "depository institution" consists of "an insured bank, a financial institution subject to examination by the Federal Home Loan Bank Board or the National Creditor Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation, the Federal Savings & Loan Insurance Corporation or the National Credit Union Administration Board . . . ." 12 U.S.C. § 1861(b)(4).

Using this definition, it is difficult to accept the the Debtor's position that American Century and PBHG Funds, Inc. are "depository institutions" in the absence of any proof to the contrary. Rather, it would appear that both are investment companies as defined in Article 12 of the New York Banking Law ("NYBL") and in 15 U.S.C. § 80a-1 *et seq. See Investment Co. Institute v. Camp*, 401 U.S. 617, 625, 91 S.Ct. 1091, 1096 n.11 (1971) (stating that a "mutual fund is an open-end investment company"). An investment company is engaged primarily in the "business of investing, reinvesting, or trading in securities. *See* 15 U.S.C. § 80a-3(A). NYBL § 509(4) expressly prohibits an investment company from engaging in the business of receiving deposits, except as a financial agent of the U.S. government with respect to public money.

Therefore, the Court must conclude that American Century and PBHG Funds, Inc. are not chartered depository institutions for purposes of NYD&CL § 283. Accordingly, the $2,000 in mutual funds held by them in the Debtor's name does not constitute "cash" as defined in NYD&CL § 283(2) and, therefore, there is no statutory basis for granting the Debtor the exemption in the $2,000, which remains property of the estate for distribution by the Trustee. The Trustee's objection to the claimed exemption must be sustained.

IT IS SO ORDERED.

Dated at Utica, New York

this 22nd day of January 1998

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge