UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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August 12, 2002

William J. Pfeiffer, Esq.
P.O. Box 1585
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Robert M. Ronayne, Esq.
P.O. Box 759
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Subject: ***In re Loren J. and April M. Nehlich***
Chapter 7; Bankr. No. 02-10049

Dear Messrs. Pfeiffer and Ronayne:

The matters before the Court are Trustee William J. Pfeiffer's Objections to Claimed Exempt Property ("first Objection") and Objections to Property Claimed Exempt on Amended Schedule C ("second Objection") (collectively, "Objections"). These are core proceedings under 28 U.S.C. § 157(b)(2). This letter decision and the accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes Trustee Pfeiffer's Objections must be denied.

Facts. Loren J. Nehlich and April M. Nehlich ("Debtors") filed a petition for relief under chapter 7 of the bankruptcy code on February 26, 2002. Debtors filed their schedules of assets and liabilities on March 7, 2002. On their Schedule B, Debtors listed an "AG Edwards IRA Account," which they valued at $27,628.78, and a "Health Care Plus IRA Account," which they valued at $2,000.00. On their Schedule C, Debtors claimed both such IRAs fully exempt under S.D.C.L. § 43-45-6.

On April 23, 2002, Trustee Pfeiffer filed his first Objection. In it, Trustee Pfeiffer alleged Debtors' IRAs were "not exempt under SDCL 43-45-6 [or] any other section of the South Dakota Code." On April 25, 2002, Debtors filed an Amendment to Schedule

C, in which they claimed both their IRAs fully exempt under S.D.C.L. § 43-45-16 rather than S.D.C.L. § 43-45-6. On April 26, 2002, Debtors filed their Response to Trustee's Objections to Claimed Exempt Property, in which they stated they "believe[d] their claimed exemptions [did] not exceed the statutory limits."

On May 13, 2002, Trustee Pfeiffer filed his second Objection. In it, Trustee Pfeiffer alleged Debtors' IRAs were "not exempt under SDCL 43-45-16 [or] any other section of the South Dakota Code." On May 15, 2002, Debtors filed their Response to Trustee's Objections to Property Claimed Exempt on Amended Schedule C, in which they again stated they "believe[d] their claimed exemptions [did] not exceed the statutory limits."

Both matters came on before the Court on June 25, 2002. The parties agreed the only issue raised by Trustee Pfeiffer's Objections was whether Debtors' IRAs could be claimed exempt under South Dakota law. At the conclusion of the hearing, the Court set a briefing schedule. Debtors submitted their Statement of Authorities in Opposition to Trustee's Objections to Claimed Exemptions on July 25, 2002. Trustee Pfeiffer submitted his Brief in Support of Trustee's Objections to Claimed Exemptions in Amended Schedule C on July 26, 2002. Debtors submitted their Rebuttal Brief in Opposition to Trustee's Objections to Claimed Exemptions on August 6, 2002. Both matters were taken under advisement.

Discussion. A chapter 7 debtor may claim exempt "any property that is exempt under . . . State or local law that is applicable on the date of the filing of the petition." 11 U.S.C. § 522(b)(2)(A). In this case, the relevant "State or local law" is that of the State of South Dakota.

Under South Dakota law, an individual may exempt "a total of two hundred fifty thousand dollars . . . from the employee's benefit plans." S.D.C.L. § 43-45-16. In determining the scope of § 43-45-16, the Court must look to state law. *See In re Sholdan*, 217 F.3d 1006, 1008 (8th Cir. 2000); *Hanson v. First National Bank in Brookings (In re Hanson)*, 848 F.2d 866, 868 (8th Cir. 1988).

For the purposes of § 43-45-16, the term "employee benefit plan" specifically includes "any plan or arrangement . . . that is described in § 401, 403(a), 403(b), 408, 408A, or 409 of the Internal Revenue Code." S.D.C.L. § 43-45-17. An individual retirement account, or "IRA," is one such plan or arrangement. *See* 26 U.S.C. § 408. A "Roth IRA" is another such plan or arrangement. *See* 26 U.S.C. § 408A.

In their statement of authorities, Debtors describe the AG Edwards IRA Account as a "traditional" IRA and the Health Care Plus IRA Account as a Roth IRA. As the party objecting to Debtors' claim of exemptions, Trustee Pfeiffer bears the burden of proving Debtors are not entitled to claim the exemptions they have claimed. Fed.R.Bankr.P. 4003(c). Trustee Pfeiffer has not offered or pointed the Court to any evidence that would permit the Court to conclude Debtors' IRAs do not meet the requirements of either § 408 or § 408A. Under the circumstances, Debtors' IRAs may be claimed exempt under S.D.C.L. § 43-45-16.[1]

Conclusion. For the foregoing reasons, Trustee Pfeiffer's Objections are denied. The Court will enter an appropriate order.

Sincerely,

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

AUG 12 2002

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By [signature]

Irvin N. Hoyt
Bankruptcy Judge

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

AUG 12 2002

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

INH:sh

cc: case file (docket original; copies to parties in interest)

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[1] Trustee Pfeiffer did not ask the Court to determine whether the $250,000.00 exemption provided for in § 43-45-16 was excessive. *See* S.D.C.L. 43-45-18.

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