UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: BKY 4-96-7257

CHARLES ROBERT NIELSEN and
LEANN NIELSEN,

Debtors.

MEMORANDUM ORDER RE TRUSTEE'S OBJECTION TO CLAIMED EXEMPTIONS

At Minneapolis, Minnesota, June 5, 1997.

The above-entitled matter came on for hearing before the undersigned on the 30th day of April, 1997, on the motion of the Trustee objecting to the Debtors' claim of exempt property. After reading the files and hearing the arguments of counsel, the Court enters the following Memorandum Order.

FACTS

The Debtors filed a Chapter 13 petition for relief on November 12, 1996. By order dated February 6, 1997, I denied confirmation of the Debtors' Chapter 13 Plan, as amended, and converted the case to one under Chapter 7.

In their amended Schedule C, the Debtors claim the following pension or similar plans as exempt:

a. Retirement Account through Deluxe Printing: 11 U.S.C. § 541(c)(2); $277,466.00

b. Jack Pixley Sweeps, Employer Funded 401k: 11 U.S.C. § 541(c)(2); $1,266.00

c. American Bank IRA: Minn. Stat. § 550.37(24)(2); $2,352.00

d. American Bank IRA: Minn. Stat. § 550.37(24)(2); $2,596.00

e. American Funds: Minn. Stat. § 550.37(24)(2); $16,761.00

f. American Funds IRA: Minn. Stat. § 550.37(24)(2); $17,386.00.

The Trustee has objected to the Debtors' claim of exemption of the two American Bank IRAs and the two American Funds IRAs (items c-f). The Trustee does not object to the claimed exemption for the Deluxe and Jack Pixley accounts, which Debtors assert are ERISA-qualified and are not part of the bankruptcy estate.

APPLICABLE LAW

Section 550.37(24)(2) provides that "The debtor's right to receive present or future payments . . . under a stock bonus, pension, profit sharing, annuity, individual retirement account, individual retirement annuity, simplified employee pension, or similar plan or contract on account of illness, disability, death, age, or length of service" is exempt from the claims of creditors "(2) to the extent of the debtor's aggregate interest under all plans and contracts up to a present value of $30,000[1] and additional amounts under all the plans and contracts to the extent reasonably necessary for the support of the debtor and any

[1]This figure has been adjusted upward.

spouse or dependent of the debtor." MINN. STAT. § 550.37(24)(2) (1996). It is agreed that, in the aggregate, the Debtors' interest under all six plans exceeds the monetary limits of § 550.37(24)(2), as adjusted.

The only issue before me at this time is the proper construction to be given to the above-quoted language. Specifically, the question is whether, as the Debtors contend, in calculating the aggregate interest of the Debtors in "all plans and contracts" one must exclude interests in ERISA-qualified plans which are not property of the estate. See 11 U.S.C. § 541(c)(2) (1994); Patterson v. Shumate, 504 U.S. 753, 112 S.Ct. 2242 (1992). Plainly read, the statute requires the inclusion of amounts in all such plans or contracts, whether excludable from the estate or not. See Estate of Jones by Blume v. Kvamme, 529 N.W.2d 335, 339 (Minn. 1995) ("By its terms clause (2) governs all plans and contracts.").

To be emphasized again, the Trustee is not challenging the Debtors' contention that the Trustee cannot reach their interests in the two plans which they claim are ERISA-qualified and therefore not property of the estate under § 541(c)(2) and the Supreme Court's Patterson decision. Instead, she is merely seeking to include them for purposes of calculating whether the four other plans which are not ERISA-qualified (and therefore are property of the estate) can be exempted.

ACCORDINGLY, IT IS HEREBY ORDERED that all six plans must be included in making the calculation of the Debtors' aggregate interest in all plans and contracts under § 550.37(24)(2). An evidentiary hearing will be set to determine whether the Debtors' aggregate interest in all six plans exceeds the adjusted monetary limits of § 550.37(24)(2), plus an amount reasonably necessary for the support of the Debtors. To the extent such aggregate interest exceeds the adjusted amount, the Debtors shall be denied an exemption in the four IRA plans.

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Nancy C. Dreher
United States Bankruptcy Judge