

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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In re: BKY 3-93-0040

Fredrick Breeggemann and ORDER
Sheri Anne Breeggemann,

Debtors.

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This matter came before the Court on Trustee's objection to Debtors' claimed exemption of a crop deficiency payment. Michael Iannacone appears as Trustee. Mary McCormick appears on behalf of Debtors. Based upon the files, records, evidence and arguments of counsel, the Court makes this Order pursuant to the Rules of Bankruptcy Procedure.

I.

The Debtors filed for relief under Chapter 7 on January 5, 1993. On March 30, 1993, Debtors amended their Schedule C and claimed exempt 75 percent of a March 1993 deficiency crop check, \$3,619.50 of \$4,826.00. The dispute is over the nature of the deficiency payment under a prepetition federal production adjustment and compliance program with the U.S. Department of Agriculture's Agricultural Stabilization and Conservation Service (ASCS). The crop was planted in 1992 and the check represented the difference of the market price and the target price under the contract with ASCS for the applicable period.

The Debtors claim that the payment is subject to exemption under Minn. Stat. Section 550.37, Subd. 13, as earnings within the meaning of Minn. Stat. Section 571.921(a)(2), which includes compensation paid or payable to the producer for the sale of agricultural products when operating a family farm. They argue that the check is to supplement or replace a deficient crop which would have otherwise been harvested and sold. As such, they contend it was a substitute for and proceeds of, (FN1) an agricultural product and exemptible as earnings. The Trustee claims that the payment is not earnings for the purposes of the exemption statutes. He argues that a deficiency crop check cannot be construed as earnings as it is not compensation for personal services or for a sale of an agricultural product, rather it is a government subsidy.

II.

The issue is whether the deficiency payment constitutes earnings under Minn. Stat. Section 550.37, subd. 13. (FN2) Deficiency payments are designed to assure a target price for the farmer's

crop. The farmer must plant the crop. The deficiency payment rate is the amount by which the target price for the crop exceeds the higher of the national weighted average market price received by the farmer or the national average loan rate for the crop to maintain the its competitive market position. *Kingsley v. 1st Am. Bank (In re Kingsley)*, 865 F.2d 975, 979, 980 (8th Cir. 1989). The payment is not tied to the farmer's actual yield and the farmer receives it regardless of whether he harvests or sells his crop. *Barash v. Peoples Nat'l Bank of Kewanee (In re Krueger)*, 78 B.R. 538, 540 (Bankr. C.D. Ill. 1987).

The deficiency payment resulted from a contract signed between the Debtors and ASCS. The Debtors' right to payment under a federal production adjustment and compliance contract was a contract right or general intangible. *In re Holte*, 83 B.R. 647, 648 (Bankr. Minn. 1988). The deficiency payment is not derived from the sale of an agricultural product, but rather is a subsidy on the farmer's return on planted crops. The payment does not

represent compensation payable for personal services or to a producer for the sale of a qualifying crop, but rather is compensation,

under a contract based on a predetermined federal formula. The Debtors would have received the payment regardless of whether they harvested or sold their crop. Therefore, the payment is not earnings under the statute, but rather a contract right of the Debtors.

ACCORDINGLY, IT IS THEREFORE ORDERED: The Trustee's objection to the claimed exemption of the deficiency crop check is sustained.

Dated this ____ day of July, 1993.

BY THE COURT:

DENNIS D. O'BRIEN
U.S. Bankruptcy Judge

(FN1)The Debtors argue that under Minn. Stat. 336.9-306 proceeds are whatever is received upon sale, exchange, collection, or other disposition of collateral, citing *In re Mattick*, 45 B.R. 615 (Bankr. D. Minn. 1985) and *Production Credit Assn. v. Martin Co. Nat'l Bank*, 384 N.W.2d 529 (Minn. Ct. of App. 1986). Both of these cases are perfection of security interest disputes between either the Trustee and a secured creditor or between two secured creditors. Neither case considered whether subsidies are "earnings" subject to exemption under Minn. Stat. 550.37, subd. 13.

END FN

(FN2)Whether the deficiency payment are proceeds under Article 9 is irrelevant in determining if it is exemptible under Minnesota law. *In re Chastek*, 1988 WL 105894 (Bankr. D. Minn. 1988). Earnings, for the purposes of Minn. Stat. 550.37, Subd. 13, are:

All earnings not subject to garnishment by the provisions of section 571.922....

Minn. Stat. 571.921 provides:

For the purposes of sections 571.921 to 571.926, the following terms have the meanings given them:

(a) 'Earnings' means:

(1) compensation paid or payable ... for personal services....; or

(2) compensation paid or payable to the producer for the sale of agricultural products...

END FN