

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY**

In re:)	
)	
TRANSPORT GROUP, INC.,)	Case No. 93-30015
A KENTUCKY CORPORATION)	Chapter 7
Debtor)	
and)	
)	
TRANSPORT ASSOCIATES, INC.,)	Case No. 93-30016
A KENTUCKY CORPORATION)	Chapter 7
Debtor)	
_____)	

MEMORANDUM

This matter came before the Court on the Motion for Refund of Unclaimed Funds to the Debtor filed by the Debtor in the Transport Group, Inc. (“Transport Group”) case and the Motion for Refund of Unclaimed Funds to the Debtor filed by the Debtor, the Motion to Disburse Unclaimed Monies filed by Baptist Healthcare System, Inc., d/b/a Baptist Hospital East (“Baptist”), and the Notice of Objection filed by Ronnie’s Bargain House (“Ronnie’s”), which the Court will interpret also as a Motion to Disburse Unclaimed Monies, all filed in the Transport Associates, Inc. (“Transport Associates”) case.

A brief factual history is required before the Court can properly consider these motions. Transport Group filed for Chapter 7 bankruptcy on January 5, 1993 (Case 93-30015). On February 19, 1996, the Court granted the Trustee’s Motion to Deposit Unclaimed Money Into Court Registry. The Trustee deposited approximately \$26,253.03. From March 13, 2003, to September 18, 2006, the Court granted numerous motions for refunds of unclaimed funds filed by various creditors. On December 11, 2006, the Debtor in the Transport Group case filed its motion for refund of the unclaimed monies. In the motion, the Debtor asserted the Court is holding approximately

\$17,616.38 in its registry, representing distributions unclaimed by creditors of the Debtor. The Debtor requested that these unclaimed funds be distributed to it.

Transport Associates filed for Chapter 7 bankruptcy on January 5, 1993 (Case 93-30016). On March 28, 2002, the Court granted the Trustee's motion to deposit \$9,228.14 into the registry of the Court. On October 30, 2002, the Trustee filed his Notice of Unclaimed Dividend – Rule 3011 (“Notice”), wherein he indicated his intent to deposit \$48,944.18 representing distributions to creditors which were never negotiated. With this Notice, the Trustee included a list of creditors and the amount of each check that was not negotiated by that creditor. These amounts represent each creditor's *pro rata* share of the distribution from the Debtor's assets. That list includes two checks to Baptist for \$347.62 and \$782.79 and one check to Ronnie's for \$2,011.01.

On February 27, 2003, Ronnie's moved for an order authorizing the distribution of \$2,011.01. This Court granted Ronnie's motion on March 5, 2003. Numerous other motions for turnover of unclaimed funds were made between March 2003 and December 2004. On December 11, 2006, the Debtor in the Transport Associates case filed an identical motion to the one filed by the Debtor in the Transport Group case seeking a refund of unclaimed monies. The Debtor in the Transport Associates case also moved for turnover of funds being held in the Court registry, in the approximate amount of \$29,588.78. Baptist objected to the Debtor's motion in the Transport Associates case indicating it is still owed \$347.62 and \$782.79 and filed its own Motion to Disburse Unclaimed Monies seeking recovery of these amounts. Ronnie's also objected stating that its total claim was approximately \$8,030.99, of which \$2,011.01 was paid. Ronnie's asserted the balance of its claim, \$6,019.98, should be paid from the unclaimed funds held by the Court.

Under 11 U.S.C. § 347, ninety days after the final distribution, Chapter 7 trustees are directed to stop payment on any check remaining unpaid, and to pay any remaining property of the estate

into the court to be disposed of under chapter 129 of title 28 [28 U.S.C. § 2041 and 2042]. Section 2041 of title 28 mandates that:

All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depository, in the name and to the credit of such court.

This section shall not prevent the delivery of any such money to the rightful owners upon security, according to the agreement of parties, under the direction of the court.

Section 2042 of title 28 provides that:

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

Under § 2042, the burden of proof is upon any movant to show its right to the unclaimed funds. The movant must satisfy a preponderance of evidence standard of proof. Any funds not claimed, eventually escheat to the United States Treasury. The legislative history of § 347 supports this conclusion.

The unclaimed funds, and any other property of the estate are paid into the court and disposed of under chapter 129 of title 28 [section 2041 et seq. of Title 28, Judiciary and Judicial Procedure], which requires the clerk of court to hold the funds for their owner for 5 years, after which they escheat to the Treasury.

The Court will first address the Debtors' motions in both the Transport Group case and the Transport Associates cases. As can be seen from the language quoted above, the Court is charged

with holding these funds until properly petitioned by the rightful owners of the funds. The Debtors now seek an order authorizing all the unclaimed funds be turned over to them. The Debtors cite 11 U.S.C. § 347, § 66 (11 U.S.C. § 106), and 11 U.S.C. § 544 in support of their position. Section 66, cited by the Debtors, is a reference to a statute that existed under the Bankruptcy Act, a statute long since repealed with the passage of the Bankruptcy Code. Neither § 347 nor § 544 provide statutory authority which would authorize this Court to turn these unclaimed funds over to the Debtors. The individual creditors are the “rightful owners” and, as such, only they may petition the Court for turnover of unclaimed funds.

The Debtors also cite In re Georgian Villa, Inc., 55 F.3d 1561 (11th Cir. 1995) in support of their argument. The Court notes that the Georgian Villa case concerned a Chapter 11 debtor and not a Chapter 7 debtor as is the situation with the two cases before this Court. Section 347(b) governs the disposition of unclaimed funds in a Chapter 11 case. Under that situation, unclaimed funds become property of the debtor or the entity acquiring the assets of the debtor under the plan, as the case may be. As these cases are not Chapter 11 cases, the controlling statute is § 347(a), not § 347(b). This Court was able to locate only one case wherein a Chapter 7 debtor was authorized to recover unclaimed funds, In re Atkins, 343 B.R. 283 (Bankr. M.D. Fla. 2005). The language used in that case is almost identical to the language used by the Debtors in their motions in the cases before this Court, even so far as referencing the repealed statute from the Bankruptcy Act. Nevertheless, whatever the justification used by that court to allow a Chapter 7 debtor to recover unclaimed funds, this Court finds it lacks the authority to grant the Debtors’ motions in these cases.

The Court now turns to the Motion to Disburse Unclaimed Monies filed by Baptist. As stated above, Baptist seeks turnover of \$347.62 and \$782.79 in the Transport Associates case. These amounts correspond to the amounts in the Trustee’s Notice of Unclaimed Dividends for this party.

As such, it appears to this Court that Baptist is the rightful owner of these funds and their motion for disbursement should be granted.

The Court now turns to the Notice of Objection filed by Ronnie's, which this Court has interpreted to constitute its own motion for disbursement of unclaimed funds. Ronnie's admits it previously received \$2,011.01, its pro rata share of the distribution of the Debtor's estate. This is the amount to which Ronnie's was entitled, as shown on the Trustee's Notice of Unclaimed Dividends. Ronnie's has failed to show it is entitled to anything beyond this amount. Simply having unclaimed funds at the end of a case does not mean each creditor can then increase its *pro rata* share. Indeed, these unclaimed funds must be held until their "rightful owner" properly requests payment of same. The Court shall enter an Order this same date in accordance with the holding of this Memorandum.

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TRANSPORT GROUP, INC.,)	Case No. 93-30015
A KENTUCKY CORPORATION)	Chapter 7
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and)	
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TRANSPORT ASSOCIATES, INC., A)	Case No. 93-30016
KENTUCKY CORPORATION)	Chapter 7
Debtor)	
_____)	

ORDER

Pursuant to the Court’s Memorandum entered this same date and incorporated herein by reference,

It is hereby **ORDERED** the Debtors’ Motions for Refund of Unclaimed Funds are **OVERRULED**.

It is further **ORDERED** that the Motion to Disburse Unclaimed Monies filed by Baptist Healthcare System, Inc., d/b/a Baptist Hospital East is **GRANTED** and the Clerk of Court shall disburse \$347.62 and \$782.79 to

Baptist Healthcare System, Inc.
d/b/a Baptist Hospital East
c/o Kenneth L. Burhans
John Harrison, Jr.
401 W. Main St. Suite 1803
Louisville, KY 40202.

It is further **ORDERED** the Motion to Disburse Unclaimed Monies filed by Ronnie’s Bargain House is **OVERRULED**.