

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON SALEM DIVISION**

IN RE:)
)
Randy Paul Huffman) Case No. B-11-51293C-7W
Karen Schadt Hoffman)
)
Debtors)
)
)
_____)

**ORDER DIRECTING THE DEBTOR, RANDY PAUL HOFFMAN, TO TURNOVER
INHERITANCE AND FOR AN ACCOUNTING**

THIS MATTER came on for hearing before the undersigned Bankruptcy Judge upon the Motion of C. Edwin Allman, III, Trustee, for an order (i) directing Randy Paul Hoffman (the “Debtor”) to turnover to the Trustee one-half (½) of the value of the estate of Myrtle Johnson Hoffman, (ii) directing the turnover of all amounts received by the Debtor as a result of the death of Myrtle Johnson Hoffman, and (iii) directing the Debtor to provide an accounting, under oath, of all financial transactions between the Debtor and the Debtor’s mother, Myrtle Johnson Hoffman, the Debtor’s father, Paul Hamilton Hoffman, Jr., the estate of Paul Hamilton Hoffman, Jr. and the estate of Myrtle Johnson Hoffman, from May 1, 2011 through the date of the accounting. The Debtor, by and through his attorney, J. Brooks Reitzel, Jr. opposed the motion, contending that the Debtor does not have a beneficial interest in the Hoffman Trust and that the motion for accounting is unjustified and/or moot as the Debtor has voluntarily given the Trustee an accounting.

FINDINGS OF FACT

1. On May 13, 2011, the Debtor's father, Paul Hoffman, Jr., passed away. The Debtor was named executor of his estate and on June 15, 2011, the Debtor filed an Application for Probate and Letters Testamentary wherein he listed \$372,202.00 in liquid assets owned jointly with his father's surviving spouse, Myrtle Hoffman and \$42,556.00 in assets owned by Paul Hoffman individually. The inventory also reflected the existence of insurance policies, retirement plans, IRA accounts or annuities all payable to Myrtle Hoffman.

2. All of the assets of the Debtor's father, Paul Hoffman, Jr. passed to the Debtor's mother, Myrtle Johnson Hoffman.

3. On June 24, 2011, Myrtle Johnson Hoffman executed as grantor a Revocable Trust known as the "Myrtle Johnson Hoffman Revocable Trust (the "Hoffman Trust"). The Debtor was appointed to serve as Trustee of the Hoffman Trust.

4. On June 24, 2011, Myrtle Johnson Hoffman executed a "Last Will and Testament", and designated the Debtor as the executor of her estate. The Will provided in part as follows:

Prior to the execution of this Will I have executed a Revocable Trust Agreement dated this same day and have executed an assignment of tangible personal property **conveying all** my said property to said Revocable Trust Agreement.

I give my residuary estate, being all of my real and personal property, wherever located, not otherwise effectively disposed of, but excluding any property over which I may have a power of appointment, to the Trustee acting under that trust agreement previously executed on the 24th day of June, 2011.

The Trust is a pour over Trust and all assets from her estate went into the Trust.

5. The Hoffman Trust provides in part the following:

that **during the Grantor's life** [the life of Myrtle Johnson Hoffman] the Trustee was to receive, hold, manage and invest any and all property for the benefit of the Grantor during her

lifetime and pay such amounts of income and principal as the Trustee may from time to time deem necessary or advisable for her comfort, maintenance, support and pleasures or for payment of premiums on insurance on the Grantor's life, whether or not the Grantor is capable at any such time of making any such request. The Trustee may also pay to or for the benefit of the Grantor's issue amounts of income and principal, provided, however, the Trustee shall make no such distributions to issue if such power or distributions shall be subject to the creditors of the issue.

Accordingly, this spendthrift provision terminated at the death of Myrtle Johnson Hoffman.

6. The Hoffman Trust further provides that **at the death of the Grantor,**

The trust estate shall be divided into two equal shares, one for each of the Grantor's children, Carole Lynn Hoffman and Randy Paul Hoffman, taking into account, however, any distributions to said children or their issue during the lifetime of the Grantor, it being Grantor's intention to treat her children as equally as possible. **The share of Randy Paul Hoffman shall be distributed outright to him unless such distribution should occur within six months after the entry of any bankruptcy discharge order.¹**

7. The Debtor filed a voluntary chapter 7 petition on August 22, 2011. To date, no discharge order has been entered.

8. On October 26, 2011, Myrtle Hoffman died and pursuant to her Last Will and Testament all of her assets passed over to be administered pursuant to the terms of the Hoffman Trust. Under the terms of the Hoffman Trust, in as much as the Debtor has not had a bankruptcy discharge order entered, the Debtor's one-half share passed to him outright.

LEGAL ANALYSIS

¹ The Hoffman Trust provides that any portion not distributed to the Debtor shall be distributed in equal shares to the trusts hereinafter established for his children. The share for Carole Lynn Hoffman was also held in trust.

The issue to be addressed is whether the Debtor's one-half interest in the Hoffman Trust is an asset of the Bankruptcy Estate. Unless there is a specific federal interest that would require a different result, property interests are created and defined by state law. *Butner v United States*, 440 U.S. 48, 99 S.Ct. 914 (1979). The court is required to first look to North Carolina law to determine if the Debtor is entitled to one-half of his mother's estate.

The Trustee contends that the Debtor is entitled to his one-half share outright as the condition precedent (distribution within six months of a bankruptcy discharge) did not occur. The Debtor contends that the spendthrift clause in the Trust prohibits distribution to the Debtor. The Debtor argues that because he was in a bankruptcy proceeding and his property was subject to creditors, the Hoffman Trust requires that his share be distributed to the trusts established for his daughters. That provision provides as follows:

To the extent permitted by law, none of the beneficiaries hereunder shall have any power to dispose of or to charge by way of anticipation or otherwise any interest given to such beneficiary; and all sums payable to any beneficiary hereunder shall be free and clear of debts, contracts, alienations and anticipations of such beneficiary and all liabilities for levies and attachments and proceeding of any kind, at law or in equity, and, in the case of a married person, free from the control of his spouse.

The pour over Trust provided for outright distribution to the Debtor "unless such distribution should occur within six months after the entry of any bankruptcy discharge order in which case his share shall not be distributed to him but shall instead be distributed in equal shares *to the trusts hereafter established for his children.*" Additionally, "the share created for Carole Lynn Hoffman shall be held in trust for her under the terms and conditions as herinafter provided." The spendthrift provisions of the Trust are only applicable to any trust created for the Debtor's children and for the Trust created for his sister, Carole Lynn Hoffman.

The term "outright" is defined in Webster's Dictionary as being given without

reservation, made without encumbrance or lien...complete, entire. The Debtor was entitled to the outright and immediate share of his mother's estate at her death, unless such distribution should occur within six months after the entry of any bankruptcy discharge order. This was a condition precedent that did not occur and the Debtor was therefore entitled to his one-half share of the trust corpus. Under North Carolina law, the Debtor is entitled to an outright distribution of his share of the Trust. *See* N.C. Gen. Stat. § 36C-5-506. (A mandatory distribution means a distribution of income or principal that the Trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the Trust.)

How the bankruptcy filing impacts the Debtor

11 U.S.C. § 541(a)(5) provides that property of the estate includes “Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date (A) by bequest, devise, or inheritance.” Accordingly, the Debtor's share under the Trust is an asset of the estate.

Based on the foregoing and for the reasons stated herein, the Trustee's Motion For Turnover of Inheritance and For an Accounting are hereby granted and the Debtor shall have a period of twenty days (20) from the date of the entry of this Order to comply.

It is so Ordered.

SERVICE LIST

Randy P. Hoffman
Karen S. Hoffman
Debtors

J. Brooks Reitzel, Jr.
Attorney for Debtor

C. Edwin Allman, III
Trustee

Michael West
US Bankruptcy Administrator