

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF IDAHO**

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**In Re:**

**Alyssa J. Kendall,  
  
Debtor.**

**Bankruptcy Case  
No. 14-40920-JDP**

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**SUMMARY ORDER DENYING TRUSTEE'S MOTION FOR  
TURNOVER**

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On October 28, 2014, chapter 7 Trustee Gary Rainsdon ("Trustee") filed a Motion for Turnover of Property or Records in this case (the "Motion"). Dkt. No. 16. In the Motion, Trustee requests that the Court enter an order compelling Debtor Alyssa Kendall to turn over to him "\$155.39, which was in [bank] account #5265 on date of filing." Because the Motion was not supported by any factual showing, the Court directed the Clerk to request that Trustee either submit an affidavit in support of the

Motion, or to set it for a hearing at which evidence in support of the Motion could be offered. In response to this request, on December 5, 2014, Trustee filed his Affidavit in Support of Motion for Turnover of Property and Records. Dkt. No. 22.

In his affidavit, Trustee avers, among other things, that when the amount sought in the Motion is added to what Trustee expects to eventually recover as an avoidable preference, together with the bankruptcy estate's share of Debtor's income tax refunds, he expects to have approximately \$4,064 to distribute to creditors in this case. Based on the information in Debtor's bankruptcy schedules, and Trustee's experience, he expects this sum will allow him to make an approximately six per cent distribution to unsecured creditors, assuming those creditors all file claims in the case.

The statutory basis for the relief requested in the Motion is § 542(a), which requires entities in possession, custody or control, during a bankruptcy case, to deliver property of the bankruptcy estate, or to account

for the value of such property, to the trustee “unless such property is of inconsequential value or benefit to the estate.” As the movant seeking relief, Trustee has the burden of proving that he is entitled to turnover of the property. *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 119, 1200-01 (9th Cir. 2012). In other words, a proper factual showing to support a § 542(a) turnover motion requires that a trustee prove that the property in question is property of the bankruptcy estate, and that it is not inconsequential in value or benefit to the estate. *See* 5 COLLIER ON BANKRUPTCY ¶ 542.02 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

Here, Trustee has not demonstrated he is entitled to turnover. Given the meager record, the Court reaches this conclusion for several reasons:

– While the Court suspects he could likely do so easily, at this point, Trustee has not shown that the \$155 in the bank account is indeed property of the bankruptcy estate. No bank account records were produced concerning these funds. And while there is a vague reference in the Motion indicating that this sum was “in account #5265 on date of filing”, and an equally nondescript suggestion in the Affidavit that this money was “in [Debtor’s] bank account”, the Court must, at best, infer that the \$155 is property of the estate.

Under the circumstances, the Court is unwilling to draw such an inference.

– Even assuming the \$155 is property of the estate, in considering whether to order turnover, § 542(a) requires the Court to focus on the value of the property targeted by the Motion, not on the value of the other assets in the bankruptcy case. Regardless of the other potential amounts of property of the estate, the Court declines to just assume that another \$155 is “consequential” in value or benefit in this context.

– At this point, Trustee has not shown that there will even be a distribution to creditors in this case. A review of the docket shows that no proofs of claim have been filed by unsecured creditors, and, indeed, that no notice has been given to creditors inviting them to file such claims in what was indicated to them to be a “no asset” case. As a result, at this time, it is speculation whether the \$155 Trustee seeks to recover from Debtor will ever be distributed to creditors.

– Depending upon the extent of claims to be filed, if any, Trustee has not shown how, if he recovers \$155 from Debtor, it will result in any additional consequential benefit or value to creditors. Indeed, if Trustee’s estimates of the amount of money he will have available to distribute to creditors (*i.e.*, \$4,064) and the proposed distributions to creditors (six per cent) eventually prove to be correct, the sums he seeks to recover from Debtor are, in the Court’s view, inconsequential. This is especially true considering that, if it there is to be a distribution to creditors, the \$155 Trustee seeks to recover will be reduced by 25% (\$38.75) to pay trustee compensation, and additional amounts to reimburse his administrative expenses, before

distributions are made to creditors. *See* § 330(a) (providing that trustee may receive reasonable compensation and reimbursement of actual expenses); § 326(a) (providing that a trustee's compensation may not to exceed 25% of the first \$5,000 distributed to creditors); *In re Salgado-Nava*, 473 B.R. 911, 921 (9th Cir. B.A.P. 2012) (holding that, absent "extraordinary circumstances", maximum compensation listed in § 326(a) should be presumed to constitute "reasonable compensation" for chapter 7 trustee under § 330(a)) .

Chapter 7 trustees in this District routinely exercise their discretion to administer extremely small bankruptcy estates composed almost exclusively of debtors' tax refunds, diminutive petition-date bank account balances, and even modest amounts of nonexempt unpaid wages. While in many instances access to even these small amounts of funds is critical to the fresh start debtors hope to obtain by filing for bankruptcy relief, the trustees presumably demand the turnover because, they apparently believe, even small amounts can result in "meaningful distribution" to the few creditors that eventually file claims in those consumer cases. *See* U.S. DOJ Exec. Office for U.S. Trs., Handbook for Chapter 7 Trustees at 4-16 (2012) ("A chapter 7 case must be administered to maximize and expedite

dividends to creditors. A trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. The trustee must be guided by this fundamental principle when acting as trustee. Accordingly, the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors, including unsecured priority creditors, before administering a case as an asset case.”) Though it is debatable whether it is “meaningful” or not, it is not unusual in Idaho that the aggregate distribution by chapter 7 trustees to unsecured creditors in such cases is less than \$2,000.<sup>1</sup>

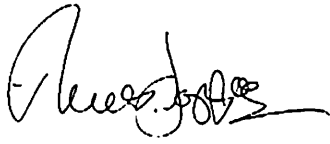
While trustees, and not the Court, decide whether the assets in a case are sufficient to justify its administration, if trustees require orders of the

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<sup>1</sup> It is common for chapter 7 trustees in Idaho to, individually, have several hundreds of these extremely “small” asset cases pending at any given time, many of which may take up to a year to close out. While it is perplexing to see how distribution of a few hundred dollars, a few pennies at a time, in satisfaction of claims is constructive, of course, the trustees generate a significant portion of their aggregate compensation from working small cases.

Court to capture the small amounts of property involved, they should expect to make a legally adequate showing that the requirements of § 542(a) are met. Having concluded that Trustee has not shown that the \$155 he seeks to recover from Debtor will result in any consequential value or benefit to the estate and creditors, **IT IS HEREBY ORDERED THAT** Trustee's Motion for Turnover of Property or Records, Dkt. No. 16, is hereby **DENIED**.<sup>2</sup>

Dated: January 7, 2015



Honorable Jim D. Pappas  
United States Bankruptcy Judge

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<sup>2</sup> Given the small amounts at stake, it is not surprising that Debtor did not engage her counsel to oppose the Motion. But that is of no moment. Even absent opposition, the Code requires Trustee to prove facts sufficient to warrant the relief he requests in the Motion. *In re Jacobson*, 676 F.3d at 1200-01. In other words, Debtor's failure to object to the Motion does not amount to an admission or proof that the statutory elements to justify a turnover are present.

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4447559 Kallie Carney

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TOTAL: 4

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| 4447555 | Bonneville Billing                    | 1186 E 4600 S Ste 100      | Ogden, UT 84403                    |
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| 4447562 | Progressive Financial                 | 1919 W Fairmont Dr Ste 8   | Tempe, AZ 85282                    |
| 4447563 | St. Lukes Clinic                      | POB 587                    | Twin Falls, ID 83303               |
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| 4447565 | Statewide Collection                  | PO Box 782                 | Twin Falls, ID 83303               |
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TOTAL: 22