

**United States Bankruptcy Court
District of New Mexico**

Document Verification

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
GARY SPERLING and
DIANNE SPERLING,
Debtors.

NO. 7-02-18870 SL

**MEMORANDUM OPINION ON
ABANDONMENT OF ASSETS**

This matter is before the Court on the Debtors' Motion for Order Determining Assets of Case to be Fully Administered and the Trustee's objection thereto. Debtors are represented by R. Trey Arvizu, III. The Trustee Oralia Franco is self-represented. This is a core proceeding. 28 U.S.C. § 157(b). For the reasons set forth below, the Court finds that Debtors' Motion should be denied.

The facts are not disputed. Debtors filed their chapter 7 case on December 17, 2002 and Oralia Franco was appointed trustee. The first meeting of creditors was scheduled for January 21, 2003. The Trustee adjourned the meeting to the February docket to allow Debtors to file an amendment correcting social security numbers. The Trustee filed an objection to the Debtor's exemptions on February 13, 2003. The Trustee conducted the continued creditors' meeting on February 25, 2003 and filed her report of the meeting on March 5, 2003 which 1) stated that the creditors' meeting was

concluded, and 2) checked a box on the preprinted meeting report form that stated:

I report that I have neither received any property nor paid any money on account of this estate except exempt property, and that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate, and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed. R. Bankr. P. 5009, I certify that this estate has been fully administered. I request that this report be approved and that I be discharged from any further duties as trustee.

Debtors were discharged on March 31, 2003 and on April 4, 2003 the final decree was issued and the case was closed¹. The Trustee filed a Motion to Reopen Case to Administer Assets of the Estate on April 8, 2003, and an Amended Motion to Reopen Case to Administer Assets of the Estate on April 9, 2003. Attached to the Amended Motion is an affidavit by the Trustee's paralegal that states the "no-asset" box on the report was checked in error. Also attached to the Amended Motion is a letter from Debtors' attorney to the Trustee offering to settle the objection to exemptions through a cash payment to the Trustee.

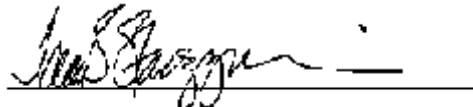
DISCUSSION

¹ The closing of the case with a pending objection to exemptions may have been an administrative error. However, the Court does not need to decide this to rule.

As a general rule, once an asset of the estate has been abandoned by the trustee it is no longer part of the estate and is effectively beyond the reach and control of the Trustee. In re Hill, 195 B.R. 147, 151 (Bankr. D. N.M. 1996)(citing In re Sutton, 10 B.R. 737 (Bankr. E.D. Va. 1981)). Courts recognize several exceptions to the general rule, one of which is "where the trustee's abandonment was the result of a mistake or inadvertence, and no undue prejudice will result in revocation of the abandonment." In re Ozer, 208 B.R. 630, 634 (Bankr. E.D. N.Y. 1997). See also Woods v. Kenan (In re Woods), 173 F.3d 770, 780 (10th Cir. 1999)(Abandonments can be revoked under Rule 60(b) but that relief can be challenged on equitable grounds such as unfair prejudice to the property owner.); Rameker v. Berning Garage, Inc. (In re Alt), 39 B.R. 902, 904 (Bankr. W.D. Wisc. 1984)(Court can set aside abandonment if the abandonment was an "inadvertent error" and the parties will not be unduly prejudiced.) Cf. Hill, 195 B.R. at 149 ("The operation of § 554(c) is grounded upon a presumption of intentional abandonment by the trustee.") The fact that the error occurred in part because the § 341 meeting was rescheduled to permit the Debtors to file the amendment to correct the social security numbers takes this case out of the "mere

carelessness" category and, in light of the confusion following the second § 341 meeting, puts it into the "excusable neglect" category. In re Woods, 173 F.3d at 779.

In this case, the Court finds that the no-asset report was the result of mistake, inadvertence or excusable neglect by the Trustee. The Court further finds that setting aside the no-asset report will not unduly prejudice the Debtors. The result is that the Debtors will be placed in the situation they would normally be in had the error not occurred. For these reasons, the Court will deny Debtors' Motion.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on February 5, 2004, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

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