

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:)
BARBARA ROBBINS,) Case No. 05-40334 EEB
) Chapter 7
Debtor.)
_____))
)
KAREN DUDNIKOV *et al.*,) Adv. No. 06-1225 EEB
)
Plaintiffs,)
)
v.)
)
BARBARA ROBBINS,)
)
Defendant.)

ORDER DENYING DISCHARGE

THIS MATTER came before the Court on Plaintiffs' Complaint, alleging grounds for denial of discharge, and dischargeability of the particular debts owed to Plaintiffs. At trial, Plaintiffs focused much of their evidence on one specific ground for denial of Debtor's discharge, the failure to satisfactorily explain any deficiency of assets to meet the Debtor's liabilities pursuant to 11 U.S.C. § 727(a)(5). Based on the evidence presented at trial, the Court hereby FINDS and CONCLUDES:

I. BACKGROUND

The Debtor is a sophisticated businessperson, with over twenty years of experience as an accountant and more than ten years as a licensed real estate broker. Among many accomplishments, she holds a Master of Real Estate, she is a Certified Tax Practitioner, and an Accredited Business Accountant. Despite this background, she has failed to provide records or other suitable explanation for the disappearance of both a sizeable inheritance and a modest divorce settlement in the 2 ½ years preceding her bankruptcy filing.

In June of 2001, the Debtor's father died intestate, and she was appointed as personal representative of his estate (the "Estate"). The Debtor and her two sisters were the primary heirs of his Estate, which included securities, life insurance policies, and real estate holdings. The sisters formed Viking 3 Property Owners, LLC to hold title to and liquidate the real estate interests.

From April 5, 2002 until March 10, 2003, the Debtor received \$124,000 as her share of the Estate's stocks. The Debtor received \$61,500 in advances and "draws" from the Estate's bank account at Park State Bank between December 12, 2003 and June 24, 2005. The Debtor also received two separate checks in 2003 worth \$20,000 each from Viking 3 Property Owners, which represented her share of two Estate properties sold in April and June of that year.¹

In addition, the Debtor filed for divorce in 2002. In 2004, she and her ex-spouse entered into a Settlement Agreement, which provided the Debtor with spousal maintenance, a division of the marital assets, and also provided for the winding up of the couple's jointly-operated businesses. As a condition of their settlement, the Debtor received from her ex-husband a lump sum payment of \$10,000 in August of that year, and 12 monthly support payments from August 2004 to August 2005 which totaled another \$10,000.

Two months before she filed for bankruptcy, the Debtor cashed a check from one of her business accounts in the amount of \$10,850. In the days prior to her bankruptcy filing, she claimed that she sold a 1999 Ford truck for \$14,000 and spent the cash on ordinary living expenses.

This amounts to \$270,350 in income and/or cash received by the Debtor in the 2 ½ years before her bankruptcy, in addition to income earned from employment or operation of a business.

On October 7, 2005, the Debtor filed her Chapter 7 bankruptcy petition, together with her Statement of Financial Affairs ("SOFA") and accompanying Schedules of Assets and Liabilities ("Schedules"). Question 1 of the SOFA required the Debtor to disclose her income from employment or business for two years prior to her bankruptcy filing. In response, she reported \$8,750 in wages for 2003, \$30,367 in 2004, and \$29,639 from January to October 2005. Question 2 required her to disclose any income from sources other than employment or business for the two years immediately preceding the filing of her bankruptcy petition. She did not list any other income.

The Debtor testified that she had not kept track of her personal spending, but that the money she had received from the Estate and the 2004 Settlement Agreement was all gone. The Debtor was unable to point to any specific records to substantiate where she had spent the money. She claims that she paid \$60,000 towards taxes, contributed \$80,000 to her business, Northstar Construction, and spent the remainder on ordinary living expenses.

The Court did not find this testimony credible. The Debtor does not appear to have any extraordinary living expenses. In fact, her living expenses appear to be quite minimal. She has been living with her boyfriend since 2003. While she has sometimes paid him rent or a portion of the rent, more often he has received rent through "barter." The Debtor transferred title to a

¹The Debtor appears to be entitled to additional distributions from the future liquidation of real estate holdings by Viking 3 Property Owners.

boat she owned to her boyfriend. She spent significant sums in repair and maintenance of the boat after she transferred its title to him.

She further claims that she paid her living expenses in cash. The Plaintiffs demonstrated, however, that she regularly and routinely used her debit and credit cards for her expenses, both for small and large expenses. None of the records she produced in discovery showed where she spent the additional \$270,000.

By way of example, the Plaintiffs pointed out the discrepancy in her accounting for the proceeds from the sale of the 1999 Ford truck. She reported to her Chapter 7 trustee that she sold the truck for \$14,000 immediately before the bankruptcy filing. She claimed that she used over \$5,000 of these proceeds to pay specific expenses and that she paid them with cash or a money order. She listed 12 expenses, with a detailed description of the date each was paid, the recipient of the payment, the reason for the payment, and the exact amount of the payment. At trial, the Plaintiffs went through many of these claimed uses of the \$14,000 and showed that the payments of the enumerated expenses were actually made by means of a check written on one of the Debtor's bank accounts. The Debtor was never able to give a satisfactory explanation for the disappearance of the \$14,000 in cash. The Plaintiffs showed that, in the seven months following her bankruptcy filing, the Debtor deposited \$13,200 into her personal bank account. These were not checks deposited, but cash deposits. She did not typically make any significant amount of cash deposits. By way of contrast, her cash deposits in the seven months preceding her bankruptcy amounted to only \$300.

II. ANALYSIS

The Plaintiffs bear the burden of proof to establish a basis for the denial of the Debtor's discharge. Fed. R. Bankr. P. 4005. Under Section 727(a)(5) of the Code, the creditor must first prove that the debtor, at a point in time proximate to the commencement of their bankruptcy filing, had significant and identifiable assets, that those assets were nonexistent as of the filing of the petition, and that the debtor has been unable to provide a satisfactory explanation. *In re Hyers*, 70 B.R. 764, 770 (Bankr. M.D. Fla. 1987). Once the creditor has made a *prima facie* case, the burden shifts to the debtor to provide a satisfactory explanation. *In re Chalik*, 748 F.2d 616, 619 (11th Cir. 1984). "Satisfactory" means that the explanation must appear credible and convincing to the judge. *Id.* (citing *In re Shapiro & Ornish*, 37 F.2d 403, 406 (N.D. Tex. 1929)).

In the present case, the Debtor's bankruptcy petition shows that she is currently insolvent. Her stated liabilities of \$213,526.49 exceed her stated assets of \$20,805. The Plaintiffs, however, have shown that over the 2 ½ years preceding the Debtor's bankruptcy filing, she received at least \$270,000 in additional income. Of that total, \$128,350 should have been disclosed in her SOFA and accompanying Schedules, but was not. The Debtor has been unable to provide this Court with a satisfactory explanation regarding the ultimate disposition of the monies received from the Estate and her 2004 Settlement Agreement.

The Debtor stated several times at trial that, with more time to research, she would be able to explain exactly what happened to all of the money she received. However, her day in court came, and she was not prepared. Her general explanation that she spent this large amount of cash on living expenses was not satisfactory. “Explanations of a generalized, vague, indefinite nature such as assets being spent on ‘living expenses,’ unsupported by documentation, are unsatisfactory.” *Sonders v. Mezvinsky (In re Mezvinsky)*, 265 B.R. 681, 690 (Bankr. E.D. Pa. 2001) (citing *Carter Eng’g Co. v. Carter*, 236 B.R. 173, 181 (Bankr. E.D. Pa. 1999)).

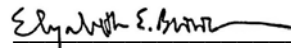
Having resolved this matter under Section 727(a)(5) of the Code, this Court does not need to address the remaining claims under Sections 727(a)(4) and 523.

III. CONCLUSION

For the foregoing reasons, this Court enters judgment in favor of the Plaintiffs, Karen Dudnikov and Michael Meadors, and against the Defendant Barbara Robbins. The Debtor’s discharge is hereby denied pursuant to 11 U.S.C. §727(a)(5).

DATED this 25th day of October, 2006.

BY THE COURT:



Elizabeth E. Brown, Bankruptcy Judge