

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

MAR 04 2005

IN RE:

Todd Joseph LaScola,

Debtor.

ENTERED

MAR 04 2005

K. E. P.

C/A No. 04-09234-WBRENDA K. ARDRE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (11)

ORDER

Chapter 7

THIS MATTER comes before the Court upon Debtor's Objection to Claims pursuant to 11 U.S.C. § 502 (the "Objection") in which Todd Joseph LaScola (the "Debtor") objects to claims that he listed on his Schedules as a result of a criminal judgment involving victims who were clients of CPA Advisors Network ("CPA") and/or CPI Investment Management ("CPI"). It appears that, based upon documentation submitted by Debtor attached to his Objection, CPA was placed into liquidation under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), and that Debtor, a principal of CPA involved in the improper transfer of funds from CPA customer accounts, has been criminally convicted and imprisoned as a result of such transfers. The SIPA proceeding was administered before the United States Bankruptcy Court for the District of Rhode Island.

Debtor contends that all creditors relating to the above proceeding, including clients of CPA and CPI, as well as the Securities Investor Protection Corporation, have been fully satisfied through the SIPA proceeding or otherwise. Accordingly, he requests that the Court deem the claims as "satisfied" and dismiss said claims.

However, the Court declines to grant Debtor's request for several reasons. First, there have been no claims filed in this case. 11 U.S.C. § 501 governs the filing of proof of claims. The legislative history to 11 U.S.C. § 501 provides that the filing of a proof of claim should be accomplished where some purpose would be served. In no-asset liquidation cases, such filing is not necessary. H.R. REP. NO. 95-595, at 351 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6307. The

purpose of filing a proof of claim “is to allow the creditor to assert a right to participate in the distribution of assets.” Deutsch-Sokol v. Northside Savings Bank (In re Deutsch-Sokol), 290 B.R. 27, 31 (Bankr. S.D.N.Y. 2003). See also Beezley v. California Land Title Co. (In re Beezley), 994 F.2d 1433, 1435 (9th Cir. 1992) (the filing of a claim is the sine qua non of participating in a distribution of the estate’s assets).

Debtor’s bankruptcy case is a chapter 7 no-asset case, and creditors were advised not to file proofs of claim unless otherwise notified. No distribution to creditors is anticipated. Accordingly, Debtor’s Objection to claims that have not been filed appears moot and is a sufficient basis to deny the Objection.¹

Further, the Court separately notes that courts have uniformly held that debtors in a chapter 7 no-asset case do not have standing to object to a proof of claim unless there will be a surplus of funds. United States v. Jones, 260 B.R. 415, 417-18 (E.D. Mich. 2000) (citing cases). See e.g., Willemain v. Kivitz, 764 F.2d 1019, 1022 (4th Cir. 1985) (applying the principle that an insolvent debtor lacks standing to object to claims to a debtor’s appeal from a proposed sale of property); In re Toms, 229 B.R. 646, 650 (Bankr. E.D. Pa. 1999) (standing to object to claims in a chapter 7 case is typically reserved to the trustee who has a duty to do so if a purpose would be served); In re Payne, No. 95-8343, 1996 WL 33340789, at *2 (Bankr. D.S.C. June 5, 1996) (debtor appeared to have standing to object to trustee’s motion to estimate proof of claim where there would likely be a 100% distribution).

¹ It has been recognized that an objection to a proof of claim by the chapter 7 trustee is pointless in a no-asset case since there would be no distribution to creditors. In re Toms, 229 B.R. 646, 650 n.3 (Bankr. E.D. Pa. 1999). The same observation can be made with respect to objections by chapter 7 debtors, as discussed more fully hereinafter.

A few courts have also found that chapter 7 debtors in a no-asset case may have standing to object to claims if sustaining a debtor's objection to a proof of claim would then make funds available to pay nondischargeable claims for which the debtor may be responsible for satisfying post-bankruptcy. Jones, 260 B.R. at 418 (citing Mulligan v. Sobiech, 131 B.R. 917, 920 (S.D.N.Y. 1991).

In a chapter 7 case, a discharge under 11 U.S.C. § 727(b) discharges a debtor from all pre-petition debts except for those listed in 11 U.S.C. § 523(a), whether or not a proof of claim based on any such debt or liability is filed or allowed. 11 U.S.C. § 727(b). A complaint to determine dischargeability of such debts in a chapter 7 may be filed at any time, except for those debts listed under 11 U.S.C. § 523(c). Fed. R. Bankr. P. 4007(b) and (c).² As noted by one bankruptcy court, in a chapter 7 no-asset case, where there is no possibility of a surplus that could be returned to the debtor, the trustee can object to a claim (if necessary or appropriate) or the debtor can bring an adversary proceeding to make a determination of dischargeability. Jones, 260 B.R. at 419. The debtor does not have standing to object to a proof of claim unless, as a result of sustaining such an objection, funds would then be available to pay the nondischargeable debt. Id. See also COLLIER ON BANKRUPTCY, ¶ 502.02[2][c] (15th ed. rev. 2003) (unless there is a determination that could be made that a nondischargeable claim could be satisfied in some measure by a potential distribution or if disallowance would yield a solvent estate, the debtor has no pecuniary interest and does not have standing to object).

In the matter before the Court, there has been no indication that there could be a surplus of funds available for distribution. Debtor listed \$200.00 in assets and liabilities exceeding

² 11 U.S.C. § 523(c) references debts of a kind specified in 11 U.S.C. § 523(a)(2), (4), (6), and (15).

\$10,000,000.00.³ There has been no proceeding commenced that would yield a distribution of any funds to the estate or effect such distribution.⁴ Further, given that Debtor only lists \$200.00 in assets, it appears unlikely that sustaining Debtor's Objection, even if appropriate, could make funds available for distribution or to pay nondischargeable debts, if any. Accordingly, there being no claims filed in this case and for the further reasons as set forth herein, it is hereby

ORDERED that Debtor's Objection is moot or in the alternative, is denied.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,

March 4, 2005

³ The Court notes that Debtor is currently incarcerated.

⁴ Debtor contends in its Objection that all claims referenced therein have in fact been satisfied through the related SIPA proceeding. There is some evidence in the record that certain debts may be the result of a criminal restitution order. Whether these debts remain or are nondischargeable is not before the Court. See 11 U.S.C. § 523(a)(7), (a)(13), (a)(19).