

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

C/A No. 17-00313-dd

Chris Allen Smock,

Chapter 7

**ORDER GRANTING MOTION TO
DISMISS**

Debtor.

This matter is before the Court on the United States trustee's ("UST") January 24, 2017 motion [Docket No. 8] to dismiss Chris Allen Smock's chapter 7 bankruptcy case. L.E. Pauli Coffey, the personal representative for Mr. Smock's probate estate, filed a response to the UST's motion on February 8, 2017 [Docket No. 11]. The UST contends that neither a deceased debtor nor a probate estate is eligible to be a debtor. A hearing was held on the UST's motion on February 21, 2017. Ms. Coffey and counsel for the UST appeared at the hearing. Based on the statements made on the record at the February 21, 2017 hearing, the Court granted the UST's motion and dismissed the chapter 7 case. The Court now issues this order.

The chapter 7 case was filed on January 23, 2017. The chapter 7 voluntary petition was signed by Ms. Coffey using a power of attorney from Mr. Smock. Question 6 of Part 1 of the voluntary petition states, "Debtor died as resident of Beaufort 01/07/2016". Ms. Coffey filed with the petition a copy of a durable power of attorney that designates Ms. Coffey as Mr. Smock's attorney in fact, effective January 7, 2016.

The UST argues that the law is clear – an estate of a deceased individual is not eligible to be a debtor under 11 U.S.C. § 109. Ms. Coffey did not present any authority to the contrary. 11 U.S.C. § 109(a) states, "Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality,

may be a debtor under this title.” The term “person” is defined in section 101(41) as including an “individual, partnership, and corporation, but does not include governmental unit.” Courts have uniformly held that the estate of a decedent is not a “person” eligible to file bankruptcy under section 109. *See In re Shepherd*, 490 B.R. 338, 342 (Bankr. N.D. Ind. 2013) (“[I]t is universally held that a probate estate may not be a debtor. Only persons qualify for relief under title 11 . . . and a probate estate is not a person.”) (citations omitted); *In re Quint*, 2012 WL 2370095 (Bankr. D.S.C. June 22, 2012) (denying request of special administrator of the deceased debtor’s probate estate to convert the debtor’s chapter 13 case to a chapter 7 case and citing several cases in a footnote indicating that a case cannot be converted to chapter 7 by a deceased debtor’s probate estate); *In re Estate of Roberts*, 2005 WL 3108224, at *1 (Bankr. D. Md. Aug. 15, 2005) (“A decedent’s estate, even when represented by an individual fiduciary, is not a person that may be a debtor under the Bankruptcy Code.”).

Mr. Smock was deceased at the time of the filing of this bankruptcy case by Ms. Coffey, his personal representative. As a result, pursuant to section 109, neither Mr. Smock nor his probate estate is eligible to be a debtor. This chapter 7 case is dismissed.

AND IT IS SO ORDERED.

FILED BY THE COURT
02/27/2017



Entered: 02/28/2017

David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina