

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

IN RE:  
HARRY L. ALEXANDER,

INVOLUNTARY CASE NO. 00-10500

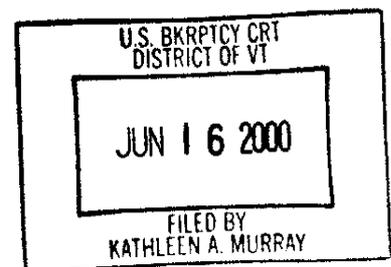
Debtor.

MEMORANDUM DECISION AND ORDER ON DEBTOR'S MOTION  
TO ALLOW USE OF INDIVIDUAL RETIREMENT ACCOUNT

#154-1  
#155-1

The Debtor herein has filed a motion requesting an order of this Court allowing him "to use all of his Individual Retirement Account ("IRA") except for the sum of \$500,000." The motion indicates that the "Debtor does not know any reason or basis to exclude his use of his IRA if sufficient amounts are held to fully satisfy the claims of creditors plus administrative fees." Based upon the findings and orders of Hon. Cornelius Blackshear, U.S. Bankruptcy Judge, and the order of Hon. Stanley Stein, U.S. District Court Judge, both of the Southern District of New York, it appears that there is reason and basis for prohibiting, or at least restricting, the Debtor's access to his IRA (which has a current balance in excess of \$1.4 million). The Debtor's motion indicates that the Debtor is not seeking access to or use of the entire IRA and would like this Court to determine how much of the IRA must be restricted in order to protect creditors and the possible chapter 7 estate, and to allow him use of all funds in excess of that amount. The Court declines this request at this time.

First Community Bank f/k/a Bank of Woodstock ("the bank") has filed a memorandum in opposition to Debtor's motion, wherein it (i) opposes any use of the IRA which would leave a balance for creditors less than \$740,000, (ii) requests that this Court enter an order which allows the Debtor to withdraw only such funds as are necessary for living expenses, with a cap of \$7,500 per month and specifically prohibits Debtor from using the IRA to pay his attorneys' fees, and (iii)



requests that these restrictions on the Debtor's use of the IRA remain in effect until the involuntary estate is closed or the petition is dismissed. The United States, through the Small Business Administration ("SBA"), joins in the bank's opposition.

Pursuant to 11 U.S.C. section 303(f), "except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate and the debtor may continue to use, acquire or dispose of property as if an involuntary case concerning the debtor had not been commenced." Thus, pending adjudication of the involuntary petition, involuntary debtors are generally permitted unfettered use of their assets. However, while Debtor's case was pending in the Southern District of New York, Judge Blackshear, upon oral motion by the bank, entered orders prohibiting the Debtor from using or otherwise dissipating the IRA, except for (i) a one-time principal invasion of \$25,000 for specific moving, storage and educational purposes, and (ii) for monthly withdrawals, to cover of the Debtor's living expenses, of up to \$10,000 per month. Judge Blackshear revoked these orders by "Revocation Order" dated April 7, 2000, wherein he stated that the "Court no longer deems it appropriate to permit the invasion of the IRA account for the reasons set forth in the record of the status conference held on April 5, 2000."<sup>1</sup>

The Debtor tacitly acknowledges in his motion that his access to the IRA should be limited to the excess available beyond the amount needed to satisfy all creditors' claims and administrative expenses, but argues against a monthly cap or any limitation on withdrawals above this figure.

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<sup>1</sup> By order dated April 11, 2000, i.e., subsequent to the entry of these orders, Judge Blackshear transferred the involuntary case to this Court. Thereafter, the Debtor filed an emergency application with Judge Stein, of the the District Court for the Southern District of New York, requesting an order relieving the Debtor of the restrictions on his use of the IRA. By memo endorsement dated May 16, 2000, Judge Stein directed the Debtor to make any motion to modify the Judge Blackshear Revocation Order to the Bankruptcy Court of the District of Vermont, where the involuntary case was then pending.

However, as of this date there is no evidence -- and no schedules signed by the Debtor -- fixing the amount of such claims and expenses; the Court has only the arguments of counsel as to the allowability and amount of claims. In order to fix the amount that must be preserved for the possible chapter 7 estate, an evidentiary hearing must be held.

The Debtor indicated an urgent need to have funds to pay his living and medical expenses. The bank and the Debtor were not able to agree on what would be a reasonable monthly allowance from the IRA to address these expenses. The Debtor would also like to pay his attorneys' fees; the bank and SBA oppose such payment prior to an adjudication of the involuntary petition. The bank and SBA have, however, indicated their consent to the Debtor's withdrawal of up to \$7,500 per month for living expenses.

Based upon the foregoing, the entire record of this case and the documents before this Court, it is hereby ordered that (1) an evidentiary hearing on the Debtor's motion for use of the IRA funds is hereby set for July 18, 2000 at 10:30 a.m.; and (2) the Debtor is granted permission to withdraw from his IRA an amount of up to \$7,500 per 30 day period, for payment of living expenses and medical expenses, commencing as of the date of entry of this order, pending further ruling on the Debtor's motion.

IT IS SO ORDERED.

Dated: June 15, 2000



Colleen A. Brown  
U.S. Bankruptcy Judge

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