

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK06-80955
)
KAY EVELYN HANNER,) CH. 13
)
Debtor(s).) Filing No. 20, 26

ORDER

Hearing was held in Omaha, Nebraska, on September 28, 2006, regarding Filing No. 20, Objection to Exemptions, filed by First Nebraska Educators Credit Union, and Filing No. 26, Resistance, filed by the debtor. Justin Carter appeared for the debtor and Donald Roberts appeared for First Nebraska Educators Credit Union.

Debtor Kay Hanner is an employee of the State of Nebraska and participates in the State Employees' Retirement Act. That Act, at Neb. Rev. Stat. § 84-1324 states:

All annuities or benefits which any person shall be entitled to receive under the State Employees Retirement Act shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable except to the extent that such annuities or benefits are subject to a qualified domestic relations order under the Spousal Pension Rights Act.

Ms. Hanner, along with her husband, has filed a Chapter 7 bankruptcy and has claimed her interest in the State Employees Retirement Act as exempt. The exemption claim has been objected to by First Nebraska Educators Credit Union.

The objection is overruled, not because the claim of exemption is inappropriate, but because the funds held in the State Employees Retirement Account did not become property of the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2). That section provides that an interest of the debtor in property does not become property of the bankruptcy estate if it is subject to a restriction on the transfer of a beneficial interest and that restriction is enforceable under applicable non-bankruptcy law. See Patterson v. Shumate, 112 S. Ct. 2242 (1992) (dealing with retirement funds which qualified under ERISA and discussing the enforceable anti-alienation restriction therein). The state statute is an enforceable anti-alienation provision which keeps the interest of the debtor outside of the bankruptcy estate.

IT IS ORDERED: First Nebraska Educators Credit Union's objection to exemptions (Fil. #20) is denied.

DATED this 10th day of October 2006.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
Justin Carter *Donald Roberts
Kathleen Laughlin U.S. Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.