

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK82-82223
)
BLUM'S OF SAN FRANCISCO, INC.,) CH. 7
)
Debtor(s).)

ORDER

This matter is before the court on Filing No. 186, Debtor's Application for Unclaimed Funds, and Filing No. 188, Statement Supporting Release of Unclaimed Funds, filed by the debtor through its successor, Supreme Chocolatier, LLC.

A successor of the debtor has filed a request for release of unclaimed funds. In this Chapter 7 case, the trustee delivered to the Clerk of the Bankruptcy Court significant funds representing uncashed dividend checks. There remains on deposit with the clerk, or with the United States Treasury, the amount of \$22,356.13.

The records of the Clerk of the Bankruptcy Court show numerous creditors who, although claimants to a portion of the funds, have not made a claim to the funds since they have been deposited with the Clerk of the Bankruptcy Court.

The movant cites Georgian Villa, Inc. v. United States (In re Georgian Villa, Inc.), 55 F.3d 1561 (11th Cir. 1995), and In re Atkins, 343 B.R. 283 (Bankr. M.D. Fla. 2005), as authority for the court to grant the motion and direct the clerk to distribute the balance of the funds on hand to the movant. Neither of those cases support the motion. In re Georgian Villa, Inc. was a Chapter 11 case and the statutory authority for the distribution in that case is 11 U.S.C. § 347(b). However, this is a Chapter 7 case and the appropriate statutory authority, if any, is 11 U.S.C. § 347(a). The Atkins case appears to hold that if all of the remaining claimants listed on the records of the Clerk of the Bankruptcy Court have received notice of the motion, and do not object, it is appropriate to enter an order authorizing distribution to the debtor or the debtor's successor.

I do not agree with the Atkins determination, but I do agree with the result in In re Transport Group, Inc., 2007 WL 734817 (Bankr. W.D. Ky. Mar. 7, 2007).

The funds belong to the creditors and shall not be distributed to the debtor or its successor.

IT IS ORDERED that the Application for the Release of Unclaimed Funds, Filing No. 186, is denied.

DATED this 29th day of March, 2007.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Eric Dangerfield, President, Omega Consulting, 7706 Pinebrook Drive, San Antonio, TX
78230
U.S. Attorney
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.