

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

FILED

DEC 14 2001

U.S. BANKRUPTCY COURT  
MONTGOMERY, ALABAMA

IN RE:

CHAPTER 13 CASE  
NO. 96-03379-DHW

ROOSEVELT FRANKLIN

Debtor.

VS.

SUNSTAR ACCEPTANCE CORPORATION,

A.P. NO.:00-0064DHW

Defendant.

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Bank of America  
1925 W. John Carpenter Fwy  
Irving, TX 75063

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TRUSTEE'S MOTION TO CONDEMN GARNISHED FUNDS

Comes now the Chapter 13 Trustee, by and through the undersigned counsel, and moves this Honorable Court for an order condemning funds being currently held by the clerk's office pursuant to a garnishment in the above adversary proceedings. As grounds for said Motion, the Trustee states as follows:

The Debtor filed his Chapter 13 case on August 2, 1996. A proof of claim was filed by the Defendant in the adversary proceedings Sunstar Acceptance. During the pendency of the case, the Debtor filed an adversary proceeding to determine the security status of the Sunstar claim. The claim was changed from secured to unsecured after a great deal of the secured portion of the claim had been paid. A judgment was entered in

GRANTED this <sup>14<sup>th</sup></sup> day of December 2001.

Dwight H. Williams, Jr.  
Dwight H. Williams, Jr., Bankruptcy Judge

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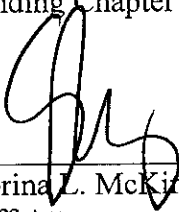
favor of the Debtor in the adversary proceeding. Following the entry of judgment, the Debtor filed a garnishment with Bank of America to collect the judgment owed. To date, there is a negative balance on the claim of Sunstar in the Debtor's Chapter 13 case. This negative claim balance reflects the amount overpaid on the claim by virtue of it originally being paid as a secured claim. When the claim was changed from secured to unsecured, it was changed from 100% payment to a 25% payment which was the dividend to unsecured creditors. As a result, the claim was overpaid approximately \$~~15,772.32~~<sup>18,493.45</sup>. The funds currently being held by the clerk of the Court represent funds which were ordered to be paid to the Trustee as a result of the claim overpayment. These funds need to be paid to the Trustee to be applied to the Roosevelt Franklin Chapter 13 case so that the discharge may enter in the case. Ultimately, the Debtor will receive the majority of these funds in the form of a refund after the case is discharged.

WHEREFORE, the above premises considered, the Trustee moves this Honorable Court to issue an order condemning the funds on hand and requiring those funds to be turned over by the clerk of the Court to the Chapter 13 Trustee for application in the Debtor's plan.

Respectfully submitted this 13th day of December 2001.

Curtis C. Reding, Jr.  
Standing Chapter 13 Trustee

By:

  
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Sabrina L. McKinney  
Staff Attorney