UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Not for Publication

In re	:	Chapter 7
WINTRADE, INC.,	:	Case No. 01-13007 (AJG)
Debtor.	:	

OPINION DISALLOWING PROOF OF CLAIM OF DEAN PETKANAS

A P P E A R A N C E S

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ARTHUR J. GONZALEZ
United States Bankruptcy Judge

I. BACKGROUND

On May 21, 2001, WinTrade, Inc. ("Debtor" or "WinTrade") filed a petition (the "Petition") for bankruptcy protection under Chapter 7. In the Petition's Schedule F, the Debtor listed Dean Petkanas ("Petkanas") as a creditor, with his address as

DEAN PETKANAS
C/O ADOLF [sic] SELTZER ESQ.[1]
501 5TH AVE., SUITE 1803
NY, NY 10017

The Clerk of the Court filed a certificate of service representing that notice of the February 18, 2002 bar date for filing claims was mailed via first class mail to the above address on November 22, 2001. Attorney Adolph Seltzer ("Seltzer"), who currently represents Petkanas and did so at all relevant times, denies ever receiving the mailing of notice.

A final hearing in the administration of the Debtor's case had been scheduled for October 17, 2007. After mailing notice of the final hearing to the same address listed above for Seltzer, the attorneys for the Chapter 7 Trustee state that they received a copy of Petkanas's affidavit on September 26, 2007, in which he asserted his claim should be allowed as a claim for unpaid wages and severance pay and excused the lateness of his claim by stating that neither he nor his attorney received prior notice of the bar date. Petkanas, a former employee of WinTrade, had filed an arbitration hearing against WinTrade for breach of an employment contract. The arbitration was stayed in May 2001 as a result of the Debtor's bankruptcy filing.

II. DISCUSSION

For purposes of the Bankruptcy Code and Rules, a "creditor is properly scheduled if he is scheduled in a manner that is reasonably calculated to provide him with notice of the bankruptcy proceeding." *In re Frankina*, 29 B.R. 983, 985 (Bankr. E.D. Mich. 1983). The Bankruptcy Code and Rules provide that notice shall be sent to the creditors, but they

[1] Although Seltzer has not raised any issues concerning it, the Court observes that Seltzer's first name Adolph is misspelled, in that it is spelled with an "f" instead of "ph" in Schedule F.

do specify that notice should be sent to the creditor's home address or to the address of their last known attorney. *See In re Savage*, 167 B.R. 22, 25-26 (Bank. S.D.N.Y. 1994).

When notice is properly addressed and mailed, a rebuttable presumption of proper receipt arises. *See, e.g., Meckel v. Continental Resources Co.*, 758 F.2d 811, 817 (2d Cir. 1985); *In re Ms. Interpret*, 222 B.R. 409, 413 (Bankr. S.D.N.Y. 1998). Here, the presumption of receipt arises because the Clerk of the Court filed a certificate of service representing that notice of the February 18, 2002 bar date for filing claims was mailed via first class mail to Seltzer's address on November 22, 2001. Seltzer's only attack on the rebuttable presumption is his affirmation of non-receipt. Federal courts in New York "uniformly" take the strict view that an affidavit of non-receipt is not sufficient to rebut the presumption of receipt. *See In re Malandra*, 206 B.R. 667, 673 (Bankr. E.D.N.Y. 1997). A contrary position could lead to disruption of the "scheme of deadlines and bar dates under the Bankruptcy Code." *In re R.H. Macy & Co.*, 161 B.R. 355, 360 (Bankr. S.D.N.Y. 1993) (quoting *In re Trump Taj Mahal Assoc.*, 156 B.R. 928, 939 (Bankr. D. N.J. 1993)). Thus, the Court holds that the affirmation by Seltzer that his office did not receive the bar date notice does not defeat the presumption of receipt.

Seltzer has not argued that notice to Petkanas at Seltzer's office would not have been proper notice even if Seltzer acknowledged receipt of the notice. Seltzer represents that he was Petkanas's attorney when the notice of the bar date was mailed. In fact, in his affidavit, he asserts that "[h]ad I received this notice, I . . . would have contacted Dean Petkanas, who still is my client . . . ." Seltzer does assert that the Debtor had Petkanas's home address, but does not and could not successfully argue under the circumstances presented that notice sent to Petkanas at Seltzer's address was improper. Thus, even if

the issue of the appropriateness of the address used had been raised, because Seltzer represented Petkanas at the time the bar date notice was mailed to his office and it is undisputed that such notice occurred within the scope of the attorney-client relationship,[2] the address used was reasonably calculated to provide notice of the bankruptcy proceeding.

III. CONCLUSION

Therefore, having concluded that the presumption of receipt of the bar date notice was not rebutted and notice to Seltzer as counsel to Petkanas was proper under the circumstances, the proof of claim of Dean Petkanas is disallowed. The Trustee should settle an order consistent with this opinion.

Dated: New York, New York
October 22, 2007

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

[2] The general rule is that an attorney's actual notice may be imputed to the attorney's client if the notice occurs within the scope of the attorney-client relationship. *See, e.g., In re Savage*, 167 B.R. 22, 26-27 (Bank. S.D.N.Y. 1994) (imputing knowledge from attorney to creditor-client where attorney represented that client in a state court action for collection of a debt that comprised the basis of the creditor's claim); *In re Malandra*, 206 B.R. 667, 676 (Bankr. E.D.N.Y. 1997); *In re Frankina*, 29 B.R. at 985 (general rule of imputing knowledge "has been consistently applied in bankruptcy proceedings in cases where the attorney has been retained by the creditor to collect the debt scheduled in the bankruptcy proceeding or to represent the creditor in that proceeding"); *In re Hutchinson*, 187 B.R. 533, 536 (Bankr. S.D. Tex. 1995) (collecting cases); *Linder v. Trump's Castle Assoc.*, 155 B.R. 102, 105 (D. N.J. 1993).