

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
:
RICHARD E. BLAZEK and : Case No. 89-02776-C H
DEBORAH A. BLAZEK, :
: Chapter 7
Debtors. :
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ORDER--OBJECTION TO DEBTORS' CLAIM OF EXEMPT PROPERTY

On May 1, 1990, a telephonic hearing was held on Trustee's objection to Debtors' claim of exempt property. George W. Appleby appeared on behalf of the Debtors, and Anita L. Shodeen appeared as Chapter 7 Trustee. At the conclusion of said hearing, the Court took the matter under advisement upon a briefing deadline. Briefs were timely filed. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court, upon review of the pleadings, arguments of counsel, and briefs submitted, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On December 11, 1989, Debtors filed a voluntary Chapter 7 petition.
2. On October 17, 1989, Life Investors Insurance Company of America issued annuity Policy No. 01-0100Y091842 (hereinafter "Annuity") to Deborah Blazek.
3. On Schedule B-4, Debtors valued the Annuity at \$8,270.00 and claimed the interest of Deborah Blazek in the

Annuity exempt as life insurance under Iowa Code §627.6(6).

4. The Trustee filed an objection to the above-described claim of exemption by Debtors on January 24, 1990.

5. The parties agree that the sole issue under advisement is whether the Annuity is a life insurance policy under Iowa Code §627.6(6).

6. Death benefits of the Annuity are as follows:

a. Death prior to the Annuity commencement date.

When Life Investors Insurance Company of America has proof that the annuitant has died before the annuity commencement date, the annuity purchase value will be paid to the beneficiary. The annuity purchase value is the single stipulated premium increased by credited interest, less any amounts withdrawn and any premium taxes.

b. Death on or after the Annuity commencement date.

If the annuitant dies on or after the annuity commencement date and before the entire interest has been distributed, the remaining portion of such interest will be distributed to the beneficiary as stated in the Annuity.

7. Deborah Blazek was age 39 on the date of issuance of the Annuity.

8. The Annuity listed the anticipated maturity date as October 17, 2034. However, Deborah Blazek may change the

annuity commencement date, with 30 days' notice, pursuant to §3(I) of the Annuity.

9. Deborah Blazek listed Richard Blazek as beneficiary under the Annuity.

DISCUSSION

In determining whether the Annuity is exempt, the Court recognizes that it is well-settled that Iowa's exemption statute must be liberally construed. Matter of Knight, 75 B.R. 838, 839 (Bankr. S.D. Iowa 1987). However, the Court also recognizes it must not "depart substantially from the express language of the exemption statute or extend the legislative grant." Id. (Citations omitted.)

Debtor asserts that the Annuity is exempt under Iowa Code §627.6(6). The statute in relevant part provides:

A debtor who is a resident of this state may hold exempt from execution the following property:

...

6. The interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a life insurance policy owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent...

The United States Bankruptcy Court, Northern District of Iowa discussed the definition of life insurance for purposes

of Iowa Code §627.6(6) exemption:

There is no specific definition under the Iowa Code as to what constitutes insurance for purposes of using Iowa Code §627.6(6).

In Huff v. St. Josephs Mercy Hospital of Dubuque Corp., 261 N.W.2d 695 (Iowa 1978), the court stated:

Whether the contract is one of insurance must be determined from its purpose, effect, content, terminology, and conduct of the parties, and not from its designation therein, since a contract which is fundamentally one of insurance cannot be altered by the use or absence of words in the contract itself. The court must look also to the intention of the parties in making this determination. Huff, 261 N.W.2d at 700 (citing 12 Appleman, Insurance Law and Practice, §7001, p. 2).

Normally, insurance is considered a contract by which one party, for compensation called a premium, assumes particular risks of the other party and promises to pay him or his nominee a certain ascertainable sum of money on a specified contingency. State v. Timmer, 260 Iowa 993, 151 N.W.2d 558, 561 (1967).

In re Buffinton, 100 B.R. 448, 450 (Bankr. N.D. Iowa 1987).

To determine whether Debtors' Annuity is life insurance in the case *sub judice*, the Court looks to Matter of Grimes, No. 88-2554-W, slip op. at 5 (S.D. Iowa Jan 5, 1990). In Grimes, the Court quoted language appearing in a Texas case:

Both life insurance and annuity contracts may take various forms but the heart of the distinction between them is this: Life insurance is a promise to pay a sum certain on the death of the insured and an annuity is essentially a form of investment which

pays periodically during the life of the annuitant or a term fixed by contract rather than on the occurrence of a future contingency.

Grimes, quoting In re Howerton, 21 B.R. 621, 623 (Bankr. N.D. Tex. 1982).

Applying this to Debtors' Annuity, the Court finds that no special death benefits are paid to Debtors' beneficiary by reason of Debtors' death. The only death benefits paid are:

- (1) When Life Investors Insurance Company of America has proof that the annuitant has died before the annuity commencement date, the annuity purchase value will be paid to the beneficiary. The annuity purchase value is the single stipulated premium increased by credited interest, less any amounts withdrawn and any premium taxes.
- (2) If the annuitant dies on or after the annuity commencement date and before the entire interest has been distributed, the remaining portion of such interest will be distributed to the beneficiary as stated in the annuity policy.

These benefits merely represent a payment of the unpaid portion of Debtors' investment, and are not traditional death benefits paid beneficiaries under a life insurance policy. See Howerton, 21 B.R. at 623, n. 2.

Furthermore, Deborah Blazek has the right to receive payments under the Annuity at any time. The particular language in this contract provides for payments to begin on October 17, 2034. However, she may change the commencement date, with 30 days' notice, pursuant to Section 3 (I) of the Annuity. In fact, she can advance this payment date without

any further consideration being paid to the company. Her right to receive the benefits is not dependent upon the occurrence of any contingent event, or the payment of any further premiums. Debtors' Annuity therefore is not life insurance.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Debtors' Annuity is not exempt under Iowa Code §627.6(6).

IT IS ACCORDINGLY ORDERED that Trustee's objection to exemption is sustained, and Deborah A. Blazek may not claim the Life Investors Insurance Company annuity as exempt.

Dated this 10th day of September, 1990.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE