



1. Debtor, Robert M. Phillips, Sr., filed a voluntary Chapter 7 petition on January 14, 1991.

2. The Bishop Group creditors were scheduled as having unliquidated, unsecured non-priority claims.

3. Claimants were scheduled as creditors having unliquidated, unsecured non-priority claims.

4. On April 4, 1991, Notice of Need to File Proof of Claim Due to Recovery of Assets was filed. Creditors were noticed that proofs of claim must be filed with the clerk on or before July 3, 1991.

5. The Claimants timely filed Proofs of Claim.

6. The Bishop Group creditors filed Complaints Objecting to Discharge and Dischargeability of Debt on July 19, 1991. In an order issued April 18, 1994, this court recognized the Bishop Group's Complaints Objecting to Dischargeability of Debt, filed July 19, 1991, as containing an informal proof of claim. Their Motion to Amend Informal Proof of Claim was granted and their claims were allowed as tardily filed claims, entitled to the priority provided by 11 U.S.C. § 726 (a)(3).

7. The Bishop Group's hotly-contested Motion to Enlarge Time for Filing Claims sought to have the July 3, 1991, deadline enlarged by sixteen days, which would result in their claims moving up in the priority distribution scheme of § 726. This court denied the motion on September 9, 1996.

8. An Order of Restitution was entered by the U.S. District Court, Southern District of Iowa on November 22, 1991, in favor of twenty-eight payees, including all members of the Bishop Group and the Claimants.

9. Judgment on the Bishop Group's complaints was rendered by this court on December 17, 1991, and January 2, 1992. The Bishop Engineering Employee Profit Sharing Plan filed a Proof of Claim based on the December 17, 1991, judgment. They classified their claim as being unsecured non-priority.

10. Debtor was granted a discharge on April 17, 1992.

11. Robert Manuel Phillips died on Tuesday, April 23, 1996.

12. On October 30, 1996, Trustee filed an Amended and Substituted Final Report and Proposed Distribution. Under the proposed distribution, priority unsecured creditors (the Iowa Department of Revenue and Finance) would receive a distribution of 10.95 percent and general unsecured creditors get zero.

13. The Claimants object to Trustee's Final Report on the basis that their claims should be recognized as secured claims with priority ahead of all but one claim of the Iowa Department of Revenue.

14. The Bishop Group objects to Trustee's Final Report because the same restitution order is the basis for their claims and, therefore, their claims should be treated similarly to those of the Claimants.

## DISCUSSION

The findings and conclusion of this court's orders of April 18, 1994, and September 9, 1996, are incorporated by reference.

Trustee seeks to distribute the remaining bankruptcy estate. There simply are not enough assets in the bankruptcy estate for any claimant with a lower priority than § 726 (a)(1) to share in the distribution. Even within § 726 (a)(1), claims whose priority is established by § 507 (a)(8) get only a 10.95 percent distribution.

The Claimants' timely-filed Proofs of Claim establish their claims as unsecured, non-priority claims, entitled to distribution priority under § 726 (a)(2). The Bishop Group's claims have been previously established as unsecured, non-priority, and not timely filed, entitled to priority under § 726 (a)(3).

The U.S. District Court entered a restitution order in favor of Claimants and the Bishop Group, in addition to other victims, on November 22, 1991. Claimants assert that by virtue of either Iowa or federal statutes regarding restitution, they hold a judgment and lien against all property of Debtor. The Claimants further argue that by virtue of their judgment being recorded in the Federal District Court, they hold a secured claim that takes priority over any tax claims that arose after the date of their judgment.

Debtor was adjudged guilty of Mail Fraud, in violation of 18 U.S.C. § 1341. At the time of his conviction, federal law provided for orders of restitution to crime victims under 18 U.S.C. §§ 3556 and 3663. The provisions relevant to the enforcement of the federal restitution orders in this case read in part:

18 U.S.C. § 3663 (h) An order of restitution may be enforced by the United States in the manner provided in section 3812 and 3813 or in the same manner as a judgment in a civil action, and *by the victim named in the order to receive the restitution in the same manner as a judgment in a civil action.* [emphasis added]

18 U.S.C. § 3613 (a) A fine imposed pursuant to the provisions of subchapter C of chapter 227 is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes unenforceable pursuant to the provisions of subsection (b). . .

(b) Expiration of lien. -- A lien becomes unenforceable and liability to pay a fine expires --

- (1) twenty years after the entry of the judgment; or
- (2) upon the death of the individual fined.

The historical note to § 3663 points out that the reference to sections 3812 and 3813 are probably meant to refer to sections 3612 and 3613, as they were added to the Code at the same time.

When the restitution order was entered, a lien arose in favor of the United States, but not in favor of the named victims. When Debtor expired, so did the United States' lien. See 18 U.S.C. § 3613 (b)(2). For the named victims to enforce the federal restitution order, they must proceed in the same manner as they would for any other civil judgment. United States v. Florence, 741 F.2d 1066, 1067 (8th Cir. 1984). Federal judgment liens attach to the real property of the defendant when entered in the judgment docket and lien index of the clerk of court. See 28 U.S.C. § 1962; Iowa Code § 624.24 (1997).

Applying the federal enforcement provisions to the facts of this case, on November 22, 1991, the Claimants had a lien against any real property of Robert Manuel Phillips, Sr., and the United States had a lien against any property of Robert Manuel Phillips, Sr. On that date, Phillips was the debtor in this case. What interests Phillips had pre-petition became property of the bankruptcy estate upon the filing of bankruptcy. See 11 U.S.C. § 541. Property that remained

property of the bankruptcy estate on November 22, 1991, was not Phillips' property to which the restitution lien could attach. See generally 11 U.S.C. § 362 (a).

The restitution lien may have attached to any real property Phillips had outside the bankruptcy estate on November 22, 1991. The judgment could have been enforced against any property Phillips acquired post-petition, any property abandoned by the bankruptcy trustee, or any property over which the bankruptcy court relinquished jurisdiction (i.e. granted relief from stay). Thus, the claims of the Claimants and the Bishop Group may be secured by property outside the bankruptcy estate.

The Claimants seek to amend their proof of claim to reflect a secured claim. A proof of claim asserting a security interest in property of the debtor must be accompanied by supporting evidence. See Fed.R.Bankr.P. 3001 (d). As discussed above, these creditors' restitution claims are not secured by property of the bankruptcy estate. They have not provided proof of their security interest. Amending the claims to show the amount of their secured claims would not impact on the distribution of estate assets. If there were sufficient assets in the bankruptcy estate to allow a distribution to these creditors, it would be in the interest of justice to permit the claims to be amended to reflect the correct amount of their unsecured claims. Even if the Claimants and the Bishop Group amend their Proofs of Claim to reflect what portion, if any, is secured, the distribution they receive from the bankruptcy estate will remain at zero.

The Claimants argue that to allow the tax claims as priority and deny the victims' secured claims under a restitution lien would render the restitution lien meaningless. There is no provision for restitution claims to be given a per se higher priority in the distribution scheme. Claimants' argument fails to recognize the Code's silent treatment of secured claims in chapter 7 cases. If their restitution claims are secured, they can pursue their remedies against the property securing

their claim even if the in personum obligation was discharged when Debtor was granted a general discharge on April 17, 1992. Debtor remained liable on a limited number of debts that are nondischargeable as a matter of law or that were determined to be nondischargeable in Adversary Proceedings, such as that brought by the Bishop Group. Unfortunately, even though some of Debtor's in personum obligations survived bankruptcy, he did not.

Claimants' argument is not completely without merit, however. As a step toward elevating the status of crime victim restitution orders in the bankruptcy context, the legislature, in the Violent Crime Control and Law Enforcement Act of 1994, amended the Bankruptcy Code to provide that "any payment of an order of restitution under title 18, United States Code," is nondischargeable. See 11 U.S.C. § 523 (a)(13). Because this amendment applies only to convictions on or after April 24, 1996, the debt to Claimants was dischargeable as a matter of law under this subsection. There is no provision for criminal restitution claims to move up on the distribution priority scheme. To reach the priority status sought by these creditors would require further legislative action, comparable to the elevated priority given claims for spousal or child support under § 507 (a)(7).

Whether the Claimants and the Bishop Group amend their proofs of claim to reflect secured claims or not, the result will be the same. Their claims are not secured by property of the bankruptcy estate. The Claimants have an unsecured, non-priority, timely filed claim that entitles them to the distribution priority provided by § 726 (a)(2). The Bishop Group hold unsecured, non-priority, and not timely filed, claims entitled to priority under § 726 (a)(3).

## **ORDER**

IT IS THEREFORE ORDERED that Trustee's Final Report is APPROVED.

IT IS FURTHER ORDERED that the Claimants' Objections to Trustee's Final Report are OVERRULED.

IT IS FURTHER ORDERED that the Bishop Group's Objections to Trustee's Final Report are OVERRULED.

Dated this \_\_\_\_\_ day of August, 1997.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT