

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 11, 2020 at 11:30 a.m.

1. [14-27645-A-7](#) **BETSY WANNAKUWATTE** **MOTION TO DISCHARGE TRUSTEES**
[DNL-5](#) **AND CLOSE CASE**
4-23-20 [202]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 23, 2020. By the court's calculation, 49 days' notice was provided. The court set the hearing for June 11, 2020. Dckt. 207.

The Motion to Discharge Trustees and Close Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
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The Motion to Discharge Trustees and Close Case is granted.

Hank M. Spacone, the Chapter 7 Trustee ("Movant") for the consolidated bankruptcy estates of Deepal Sunil Wannakuwatte ("DSW"), Betsy Kathryn Wannakuwatte ("BKW"), and Sarah Kathryn Wannakuwatte ("SKW"), filed the present Motion seeking an order to discharge trustees and close the case.

The Motion (Dckt. 202) states the following with particularity (FED. R. BANKR. P. 9013):

1. This case was commenced on July 25, 2014, by filing a voluntary Chapter 7 petition and is related to the cases of BKW's spouse (DSW) and daughter (SKW). The BKW Trustee, Alan Fukushima, was appointed July 28, 2014.
2. On February 6, 2015, the court approved a motion to consolidate the three estates nunc pro tunc to May 30, 2014, when DSW's voluntary Chapter 11 petition had commenced. SKW's case closed on March 9, 2015.
3. On December 29, 2016, Hank Spacone was re-appointed Trustee over the consolidated estate, following the conversion of the case to Chapter 7.
4. DSW's discharge was denied on April 6, 2017, but SKW and BKW received discharges on February 3, 2015 and February 10, 2015, respectively.
5. The Trustee has completed administration of the consolidated estate. On February 14, 2020, he filed his Final Report and Applications for Compensation and Notice Thereof ("Final Report"), proposing the remaining distributions required by the Inter-Estate Agreement. No objections to the Final Report have been made, and the deadline passed on March 7, 2020.
6. The final distribution was made through the DSW case, all checks have cleared, and on April 8, 2020, the Trustee filed his Final Account and Distribution Report. No objections to this report were filed by the May 8, 2020 deadline.

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 5009 provides that, in a Chapter 7 case, if the Trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States Trustee or a party in interest, there shall be a presumption that the estate has been fully administered. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

Full administration of a Chapter 7 case is presumed where the Trustee has filed a final report and account certifying that the estate has been fully administered, and no timely objection is filed by the U.S. Trustee or a party in interest. FRBP 5009; *In re Kelco Metals, Inc.* (Bankr. N.D. Ill. 2015) 532 B.R. 912, 923. Additionally, a Chapter 7 estate may be deemed fully administered even if some ministerial tasks remains undone, e.g., a purely mechanical task that does not rely on legal understanding or involve complex legal issues. *See Matter of Wade*, 991 F.2d 402, 407 (7th Cir. 1993).

DISCUSSION

This Motion was filed Ex Parte, for which the court issued an order setting it for a hearing on June 11, 2020. The court's decision in setting the hearing is addressed as follows.

On April 23, 2020, Hank M. Spacone ("Trustee Spacone"), the Chapter 7 Trustee in the above-captioned bankruptcy case, filed a pleading titled "Application to Discharge Trustees and Close Case." Dckt. 202. In the Application, Trustee Spacone states that the consolidated bankruptcy estates of (1) Deepal Sunil Wannakuwatte ("DSW"), case no. 14-25816; (2) Betsy Kathryn Wannakuwatte ("BKW"); and (3) Sarah Kathryn Wannakuwatte ("SKW"), case no. 14-25678, for which Trustee Spacone is the trustee, have been fully administered. He requests an order "declaring" that Trustee Spacone has fully administered "the estate" (presumably the three consolidated bankruptcy estates) and that he and Trustee Alan Fukushima ("Trustee Fukushima"), the Chapter 7 trustee in the BKW case, be discharged, and that the "case" (indicating one bankruptcy case) be closed. Application, p. 1:19-25; Dckt. 202.

The Application states that the BKW case is related to the DSW case (BKW's spouse) and the SKW case (BKW's daughter). Trustee Fukushima was appointed the Chapter 7 trustee in the BKW case on July 28, 2014. *Id.* ¶ 2.

On February 6, 2015, the court entered an order granting a motion of Trustee Spacone for approval of an Inter-Estate Agreement that substantively consolidated the BKW bankruptcy estate and the SKW bankruptcy estate into the DSW bankruptcy estate, effective "*nunc pro tunc*" to May 30, 2014, the date the DSW bankruptcy case was commenced. *Id.* ¶ 3. On December 29, 2016, Trustee Spacone was reappointed as the trustee over the consolidated bankruptcy estates. *Id.*, ¶ 4.

The SKW case was closed on March 9, 2015. *Id.* ¶ 4; 14-25678, Dckt. 141. DSW was denied a discharge in DSW's case and SKW and BKW received their discharges in 2015. Application ¶ 5; Dckt. 202.

Trustee Spacone has completed the administration of the consolidated bankruptcy estates, having collected property and made interim distributions as required under the Inter-Estate Agreement. *Id.* ¶ 6. The Application states that Trustee Spacone filed his final report in the DSW case and no obligations to such report has been filed. *Id.* ¶ 7. A review of the Docket for the DSW case discloses that Trustee Spacone filed his final report on April 8, 2020, that no objections to it were filed, and on May 15, 2020, the Clerk of the Court issued an order stating that:

Trustee Spacone is the Trustee;

It appears that Hank Spacone as Trustee has completed administration of the estate in the DSW case; and

It is Ordered that -

the DSW estate is closed, and

Trustee Spacone is discharged as trustee.

14-25816; Final Decree, Dckt. 1381.

Trustee Spacone states that the administration of the consolidated estate has been completed with all of the final distributions having been made as stated in the Final Report filed in the DSW case. Application, p. 3; Dckt. 202.

INTER-ESTATE AGREEMENT AND ADMINISTRATION OF BANKRUPTCY ESTATES

In considering this Application, the court first notes that these events, the consolidation of the bankruptcy estates and administration of the bankruptcy cases occurred well before the related cases were assigned to the judge who now has them or the undersigned judge who is covering the hearings on motions in these cases pending the appointment of a new judge in this District.

The Inter-Estate Agreement approved by the court in February 2015 includes a provision that the creditors holding general unsecured claims in the DSW, BKW, and SKW bankruptcy cases shall be paid from a single unsecured claim pool for the consolidated bankruptcy estates that are administered by Trustee Spacone. Order, ¶ 6 (amending ¶ 10 of the Inter-Creditor Agreement), Dckt. 165; Inter-Estate Agreement, Exhibit A, Dckt. 107.

While the Application states that the bankruptcy estates for the three cases were consolidated, it does not allege that the three bankruptcy cases were consolidated. They were not. Trustee Fukushima was not removed or replaced by Trustee Spacone as the bankruptcy trustee in this the BKW case. While Trustee Spacone had the duties to liquidate and make the distributions from the consolidated bankruptcy estates, he did not replace Trustee Fukushima.

As addressed above, the creditors with unsecured claims in each of the three cases were placed in one distribution pool, with the same *pro rata* distribution made to the creditors in each of the cases from the consolidated bankruptcy estates' assets.

Trustee Spacone has filed his Final Report in the DSW Case. 14-25816; Final Report, Dckt. 1377. The Certificate of Service by the Bankruptcy Noticing Center has seven pages of persons who were served with Trustee Spacone's Final Report. *Id.*, Dckt. 1379.

In reviewing Certificate of Service, it appears that Trustee Spacone's Final Report was served on the persons filing claims in this BKW bankruptcy case. Comparison of sampling of creditors from Claims Register in the BKW case with Certificate of Service (14-25816, Dckt. 1379).

Alan Fukushima, the Trustee in the BKW case, has not filed a declaration or other statement of support for the Application or the allegations therein. Trustee Fukushima has not filed an opposition to the Application or the evidence in support thereon. The court accepts no statement of Opposition as Alan Fukushima's adoption and certification to the court and creditors for the administration of the BKW bankruptcy estate's proper administration of the consolidated bankruptcy estates of the three cases.

SERVICE OF APPLICATION AND ABSENCE OF FINAL REPORT BY THE TRUSTEE IN THIS CASE

The original Certificate of Service for the Application, Notice, and supporting pleadings suffered from clerical error and the parties in interest served in this case was omitted. Dckt. 205. Counsel for Trustee

Spacone corrected that error, filing an Amended Certificate of Service. Dckt. 206.

A review of the Amended Certificate states that the pleadings were served on:

U.S. Trustee
Debtor
Debtor's Counsel of Record
Trustee Fukushima
Community 1st Bank
Counsel for Community 1st Bank
Counsel for Zions First National Bank
Counsel for the Trustee in the IMG Case
The Trustee in the IMG Case
Counsel for Deutsche Bank National Trust Co.
Counsel for Douglas Bertsch
Counsel for Sammy Cemo and Related Entities
Select Portfolio Servicing, Inc.

Dckt. 206.

The Claims Register in this case maintained by the Clerk of the Court lists sixty-five (65) proofs of claims filed in just this bankruptcy case. Other than the above handful of attorneys (with the above "creditors" also being served "c/o" of their bankruptcy counsel). While various parties in interest were served with Trustee Spacone's Final Report in the DSW case, that is not the Trustee's Fukushima's "Final Report" or what he adopts as his "Final Report" in this case.

While the court may construe Trustee Fukushima's non-response as his affirmative certification, such becomes weaker when the parties in interest in this case are not served with the Application and relief is requested.

Therefore, the court set the hearing on this Application and to afford Trustee Fukushima to file any supplemental declaration he believes is appropriate as he concludes his duties as the fiduciary of the BKW bankruptcy estate and the interests of that estate as administered by Trustee Spacone.

With respect to the relief that the court is inclined to grant pursuant to the Application, it is consistent with the relief granted Trustee Spacone in the DSW case in which he administered the consolidated bankruptcy estates, which would be:

IT IS ORDERED that:

(1) the bankruptcy estate in this case is closed,

(2) Chapter 7 Trustee Alan S. Fukushima hereby discharged, and that the trustee's bond for Trustee Alan S. Fukushima is hereby released from further liability, except any liability which may have accrued during the time such bond was in effect for the estate of this case; and

(3) Trustee Hank M. Spacone, as the Chapter 7 Trustee for

the interests of this bankruptcy estate in the consolidated bankruptcy estates for this case, the Deepal Sunil Wannakuwatte bankruptcy case, and Sara Kathryn Wannakuwatte bankruptcy case, is hereby discharged, and that the trustee's bond for Trustee Hank M. Spacone is hereby released from further liability, except any liability with respect to this bankruptcy case (Betsy Kathryn Wannakuwatte, No. 14-27645) which may have accrued during the time such bond was in effect for the estate of this case.

**Declaration of Trustee
Alan Fukushima**

On June 3, 2020, Chapter 7 Trustee Alan Fukushima filed his Declaration in support of the Motion. Dckt. 209. Trustee Fukushima confirms his oversight of this case, Trustee Spacone's administration of the assets of this case that were included in the consolidated estate, and that the discharge of the trustees and the closing of the case is proper.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter an order closing the Chapter 7 case and discharging the Trustees.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Discharge Trustees and Close Case filed by Hank M. Spacone, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion filed by the Chapter 7 Trustee, Hank M. Spacone, is granted, the Chapter 7 case is closed, and the Clerk of the Court is authorized to close this case.

IT IS FURTHER ORDERED that Hank M. Spacone and Alan Fukushima are discharged as Chapter 7 Trustees in this case.