

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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|--------------------|---|-------------------------------|
| In re |) | |
| |) | |
| LINDA MARIE MOUNT, |) | Bankruptcy Case No. 02C-29694 |
| |) | |
| Debtor. |) | Chapter 7 |
| |) | |
| |) | ORDER SUSTAINING TRUSTEE'S |
| |) | OBJECTION TO CLAIM OF |
| |) | EXEMPTION |

This matter came before the Court on the 4th day of September, 2002. Joel T. Marker, the Chapter 7 Trustee (the “Trustee”) in this case, appeared in behalf of himself, and James C. Haskins appeared in behalf of Linda Marie Mount (the “Debtor”).

On August 28, 2001, the Debtor rolled her 401(K) plan into an IRA plan. The total amount of funds rolled over into the IRA was \$10,708.10. On June 12, 2002, less than one year later, the Debtor filed her bankruptcy petition under Chapter 7 and claimed the IRA funds exempt under U.C.A. § 78-23-5(1)(a)(x). The Trustee objects to Debtor’s claimed exemption arguing that, because the IRA was established within one year of the Debtor’s petition date, the IRA is not exempt because U.C.A. § 78-23-5(1)(b)(ii) provides that, with respect to pension funds, amounts contributed or benefits accrued by or on behalf of a debtor within one year of bankruptcy are not exempt. In support of his objection, the Trustee cites to In re Tae Sun Hong

and Bok R. Hong, case No. 01-35072 JAB (Bankr. D. Ut. June 4, 2002), for the proposition that funds rolled over from an ERISA qualified plan into an IRA are a “contribution” within the meaning of U.C.A. § 78-23-5(1)(b)(ii) and therefore not exempt if rolled over within one year of the petition date. The Debtor argues that Tae Sun Hong is wrongly decided, that a rollover is not a “contribution” because no “new” funds are placed into a pension as a result of a rollover and that the Court should interpret exemption statutes liberally in favor of debtors and therefore allow the exemption.

After considering the pleadings and argument of counsel and after thoroughly reviewing the law with respect to this controversy, it is the opinion of this Court that Tae Sun Hong correctly interprets the effect of U.C.A. § 78-23-5(1)(b)(ii) on Debtor’s claimed exemption under 78-23-5(1)(a)(x). Therefore, it is hereby

ORDERED that the Trustee’s objection to Debtor’s claimed exemption under U.C.A. § 78-23-5(1)(a)(x) is sustained, and it is further

ORDERED that the Court, in so ruling, makes no determination as to the amount which the Debtor may claim as exempt pursuant to U.C.A. § 78-23-6(3); *see In re Kerr*, 65 B.R. 739 (Bankr. D. Utah 1986); In re Savage, 248 B.R. 573 (Bankr. D. Ark. 2000).

DATED this 26th day of September, 2002.

BY THE COURT:

s/s

GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of September, 2002, I mailed a true and accurate copy of the foregoing ORDER to the following by depositing the same in the United States mail, postage prepaid, addressed as follows:

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s/s

Judicial Assistant to Judge Clark