IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:	:	Bankruptcy Number: 01-JAB35072
TAE SUN HONG and BOK R. HONG,	:	Chapter 7
Debtors.	:	

MEMORANDUM DECISION AND ORDER SUSTAINING OBJECTION TO CLAIMED EXEMPTION

Pending before the court is the Chapter 7 Trustee's Objection To Claimed Exemptions (Trustee's Objection). The Trustee's Objection necessitates a determination of two underlying issues: first, whether an IRA established and funded prepetition from funds rolled over from an ERISA-qualified plan is exempt from the estate under 11 U.S.C. § 541(c)(2);[1] and second, if the IRA is property of the estate, whether the property is exempt under Utah Code Ann. §§ 78-23-5(1)(a)(x) or 78-23-6.

The Chapter 7 Trustee (Trustee) asserts that the funds are property of the estate under § 541(c), and objects to Tae Sun Hong and Bok R. Hong, the chapter 7 debtors herein (Debtors),

[1] All future references are to Title 11 of the United States Code unless otherwise noted.

claiming the funds in the Individual Retirement Account invested in an annuity (IRA Annuity) as exempt pursuant to Utah Code Ann. § 78-23-5(1)(a)(x). The Trustee maintains that the funds in the IRA Annuity are not exempt pursuant to Utah Code Ann. § 78-23-5(1)(b)(ii). In response, Debtors argue that the funds in the IRA Annuity are not property of the estate. Debtors assert that because the IRA Annuity was created by a rollover from a plan qualified under the Employee Retirement Income Security Act of 1974 (88 Stat. 829, as amended, 29 U.S.C. § 1001 *et seq.*(ERISA-qualified), to which 11 U.S.C. § 541(c)(2) would apply, the IRA Annuity also is protected. Alternatively, Debtors argue that the funds in the IRA Annuity are exempt under Utah Code Ann. §§ 78-23-5(1)(a)(x) or 78-23-6.

After due consideration of the stipulated or otherwise undisputed facts, the parties' briefs and arguments, and following an independent review of the applicable caselaw, the Court concludes that the funds in the IRA Annuity are property of the estate and that neither Utah Code Ann §§ 78-23-5(1)(a)(x) nor 78-23-6 exempt the funds from execution. The basis for the decision is set forth below.

FACTS

Debtor Bok Hong established the IRA Annuity on January 22, 2001. The IRA was established by the Debtor with funds rolled over from an ERISA-qualified 401(k) account, and is in the form of an annuity. The only deposits made into the IRA Annuity were: (1) January 22, 2001 in the amount of $47,090.70, and; (2) February 23, 2001 in the amount of $34,866.24. The only withdrawals made from the IRA Annuity were: (1) February 28, 2001 in the amount of $3,333.34, and; (2) September 25, 2001 in the amount of $3,333.34. The balance of funds in the IRA Annuity as of September 30, 2001 was $78,102.47.

On October 11, 2001, Debtors filed their Chapter 7 bankruptcy petition. Debtors claimed their interest in the IRA Annuity exempt pursuant to Utah Code Ann. § 78-23-5(1)(a)(x) on Schedule C, filed the same date as the petition. The IRA Annuity was listed on Debtors' Schedule B as personal property valued at $77,683. According to Schedule I, also filed October 11, 2001, Debtors are not receiving distributions from the IRA Annuity. Debtors did not amend Schedule I. The Trustee timely filed the Trustee's Objection on December 12, 2001. On April 9, 2002, Debtors filed an Amended Schedule C to reflect that they no longer claimed the funds in the IRA Annuity as exempt property. The IRA Annuity is listed on Amended Schedule B as personal property, with the caveat that the IRA Annuity is "[n]ot property of the estate pursuant to Section 541(c)(2) of the Bankruptcy Code."[2] The IRA Annuity remains valued at $77,683 on Amended Schedule B. No documents were presented at the hearing reflecting the creation of or terms of the IRA Annuity (IRA Annuity documents). Debtors concede that the IRA Annuity documents do not contain anti-alienation language.

DECISION

Jurisdiction and Burden of Proof

This matter is core as set forth in 28 U.S.C. § 157(b)(2)(A) and (O). Therefore, pursuant to 28 U.S.C. §§ 157(b) and 1334, and DUCivR 83-7.1(a), which automatically refers bankruptcy cases and proceedings to this Court for hearing and determination, this Court can enter the order set forth

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[2] Because the Debtors amended their schedules to assert the funds in the IRA Annuity are not property of the estate after the Trustee's Objection was filed, the only matter actually pending before the court is the Trustee's Objection. However, at oral argument the parties agreed that the court should first decide the Debtors' argument that the funds in the IRA Annuity are not property of the estate, and, if the funds are determined to be property of the estate, the Debtors would also make their argument that the IRA Annuity is exempt under state law.

herein.

A party objecting to a claimed exemption has the burden of proving that the subject property is not exempt. *See* Fed. R. Bankr. P. 4003(c); *In re Doyle*, 209 B.R. 897 (Bankr. N.D. Ill. 1997). However, once the objecting party has made out a *prima facie* case, the burden shifts to the debtor to prove that such property is excluded from the bankruptcy estate. *Altura Partnership v. Breninc, Inc., (In re B.I. Financial Services Groups., Inc.)* 854 F.2d 351, 354 (9th Cir. 1988)(the proponent of the argument that property is held in trust and is therefore not property of the estate has the burden of establishing the original trust relationship).

11 U.S.C. § 541.

Section 541(a)(1) provides that all "legal or equitable interests of the debtor in property" become property of the estate. 11 U.S.C. § 541(a)(1). Therefore, it is first necessary to determine if the funds in the IRA Annuity are property of the estate before evaluating whether they may be exempt under Utah law. *See Owen v. Owen*, 500 U.S. 305, 308 (1991)("No property can be exempted (and thereby immunized), however, unless if first falls *within* the bankruptcy estate.").

Debtors initially argue that the Supreme Court's decision in *Patterson v. Shumate*, 504 U.S. 753 (1992), should lead this Court to conclude that an IRA is not property of the estate. In *Patterson*, the court concluded that a debtor's interest in an ERISA-qualified retirement plan is excluded from property of the bankruptcy estate under 11 U.S.C. § 541(c)(2). *Carbaugh v. Carbaugh (In re Carbaugh)*, BAP No. KS-01-029, 2002 WL 825171, *3 (10th Cir. BAP May 1, 2002)(citing *Orr v. Yuhas (In re Yuhas)*, 104 F.3d 612, 614 (3d Cir. 1997))(Under *Patterson*, debtor's interest in ERISA-qualifed plan is completely excluded from bankruptcy estate).

Section 541(c)(2) provides:

> A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. § 541(c)(2).

Recognizing that the beneficial interest must be contained in a trust, it is necessary to determine whether the IRA Annuity in this case satisfies that requirement. For the purposes of this discussion, annuities are generally categorized as either fixed or variable. If the annuity is fixed, it "cannot constitute [a] trust[] within the meaning of § 541(c)(2) of the Bankruptcy Code unless the annuity and endowment contracts that form the basis for said annuities constitute trusts under relevant state law." *Pineo v. Fulton (In re Fulton)*, 240 B.R. 854, 866-67 (Bankr. W.D. Pa. 1999). In this case, because the IRA Annuity documents are not in evidence, it is impossible to determine if annuity and endowment contracts exist to form the basis for a trust. However, to the extent the IRA Annuity may be fixed, this Court is persuaded by the exhaustive analysis set forth in *Fulton*, 240 B.R. at 866 n.14 and particular attention should be paid thereto.

If the IRA Annuity is variable, then § 541(c)(2) does not apply inasmuch as the IRA was funded by a prepetition rollover from an ERISA-qualified plan. Instructive on this issue is *In re Ekanger*, 1999 WL 671866, *2 (Bankr. E.D. Va. May 17, 1999), wherein the court stated:

> ERISA contains no language imposing an anti-alienation requirement on funds withdrawn from a qualified plan or rolled-over to a tax-qualified IRA. It is solely because of the anti-alienation requirement that the debtor's interest in an ERISA-qualified plan does not come into the bankruptcy estate: essentially, the ERISA plan is treated like a spendthrift trust. IRA's, by contrast, are not subject to any legal restriction on alienation or anticipation. An IRA is simply a creature of the Internal Revenue Code designed to encourage taxpayers to save for retirement. That an assignment or premature withdrawal of the funds in such an account might have adverse tax consequences does not, in and of itself, constitute a "restriction on the transfer of a beneficial interest of the debtor in a trust" such as to result in the exclusion of the funds from the debtor's bankruptcy estate. Accordingly, an IRA –

> even one funded by roll-over from an ERISA-qualified pension plan – is property of the bankruptcy estate.

In re Ekanger, 1999 WL 671866, *2 (Bankr. E.D. Va. May 17, 1999); *accord, Eisenberg v. Houck (In re Houck)*, 181 B.R. 187 (Bankr. E.D. Pa. 1995).

Debtors concede that the IRA Annuity is not ERISA-qualified and, as a result, there is no federal anti-alienation restriction. They also conceded that there is no anti-alienation language in the underlying documents of the IRA Annuity. Debtors contend, however, that there is state law that restricts the transfer of the beneficial interest. Stated differently, Debtors appear to argue that at the moment the funds leave the ERISA-qualified restriction they are somehow protected by similar restrictions provided for under state law, namely Utah Code Ann. § 78-23-5.

Rather than relying on the language of Utah Code Ann. § 78-23-5 for the purpose of claiming an exemption, Debtors urge this Court to look to the policy of the exemption statute and conclude that for the purposes of § 541(c)(2), the spirit of the state statute satisfies the definition of "applicable nonbankruptcy law." This assertion is not persuasive for two reasons. First, Debtors seek to use an exemption statute to argue that the funds in the IRA Annuity are not property of the estate. This expansion of both ERISA and § 541(c)(2) is improper. *Carbaugh*, 2002 WL 825171, *4 (uncommingled monies distributed from pension plans and placed in accounts not under the auspices of ERISA do not remain protected by it, citing *Guidry v. Sheet Metal Workers Nat'l Pension Funds.*, 39 F.3d 1078, 1081-82 (10th Cir. 1994). Second, Debtors reliance on *In re Meehan*, 102 F.3d 1209 (11th Cir. 1997) is tenuous, as the analysis in *Meehan* is generally criticized as misinterpreting the Supreme Court's decision in *Patterson*. In *Meehan* it was held that the restriction need not be contained in the IRA Annuity document because a Georgia statute contained a similar

restriction. However, as set forth in *In re Lowenschuss*, 171 F.3d 673, 683-684 (9th Cir. 1999), the analysis in *Meehan* is flawed. The court in *Lowenschuss* stated as follows: "We believe that the Supreme Court's statement in *Patterson* limited 11 U.S.C. 541(c)(2) to its "natural reading" - a debtor's interest in a trust may be excluded from the bankruptcy estate only if the trust contains a transfer restriction, and that restriction is enforceable under applicable nonbankruptcy law." *Lowenschuss*, 171 F.3d at 683(citing *Patterson*, 504 U.S. at 758). Contrary to *Meehan*, the Supreme Court was clarifying that § 541 refers to "applicable nonbankruptcy law," not exclusively to state law. As stated in *In re Zott*, 225 B.R. 160, 165 (Bankr. E.D. Mich. 1998):

> To accept the premise espoused in *Meehan*, that a transfer restriction within a state statute is sufficient to meet the requirements of § 541(c)(2), would render the language 'enforceable under nonbankruptcy law' nugatory and meaningless surplusage because a state statute (nonbankruptcy law) is obviously enforceable under state law (nonbankruptcy law).

Zott, 225 B.R. at 165(cited with approval in *Lowenschuss*, 171 F.3d at 683).

Furthermore, *Lowenschuss* recognized that the trust instrument must contain the restriction, and the applicable nonbankruptcy law merely provides a means to enforce that restriction:

> Only if the transfer restriction contained in the trust instrument is enforceable under applicable nonbankruptcy law can the debtor's beneficial interest in that trust be excluded from the bankruptcy estate. Because a debtor must be able to enforce the transfer restriction contained in a trust instrument under applicable nonbankruptcy law, and because [the state statute] does not provide a means to enforce a transfer restriction contained in a trust, [the state statute] cannot operate to exclude from the bankruptcy estate Debtor's interest in the [non ERISA-qualified plan].

Lowenschuss, 171 F.3d at 684-85.

Because it is impossible to determine whether the IRA Annuity contains the requisite restriction absent the IRA Annuity documents, the funds therein are property of the estate. As a result, it is necessary to address the state exemption statutes set forth below.

Utah Code Ann. § 78-23-5(1)(a)(x)

Alternatively, Debtors argue that should the funds in the IRA Annuity be included in property of the estate, they are exempt under Utah Code Ann. § 78-23-5(1)(a)(x), which exempts property held for or payable to an individual that is described in various sections of the Internal Revenue Code:

> (x) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States Internal Revenue Code of 1986, as amended; . . .

Utah Code Ann. § 78-23-5(1)(a)(x).

Since the funds in the IRA Annuity fall within Utah Code Ann. § 78-23-5(1)(a)(x) because they are held in an arrangement that is described in Section 408 of the Internal Revenue Code, they are exempt from execution, unless another provision of the Utah exemption statute allows execution. The Trustee argues that Utah Code Ann.§ 78-23-5(1)(b)(ii), which excludes from the exemption under Utah Code Ann. § 78-23-5(1)(a)(x), any contribution made to an IRA within one year of filing for bankruptcy, is precisely such a provision.

It is undisputed that Debtors established the IRA Annuity with funds rolled over from an ERISA-qualified 401(k) account on January 22, 2001, approximately ten months before the October 11, 2001 petition date. Therefore, one criteria under Utah Code Ann. § 78-23-5(1)(b)(ii) is met. However, the question remains whether rolling over funds from an ERISA-qualified plan to an IRA Annuity constitutes a "contribution" for the purposes of Utah Code Ann. § 78-23-5(1)(b)(ii). The term "contribution" is not defined in the statute. The Debtors argue that "contribution" should be restricted to additional funds placed in the IRA Annuity after its creation; that no "new" funds were

placed in the IRA Annuity, only a transfer in the form of existing funds from the ERISA-qualified plan to the IRA Annuity. Therefore, the Debtors assert that no funds were "contributed" to the IRA within a year of filing. The Trustee, on the other hand, asserts that the statute contains no restriction on the term "contribution," and if the State legislature has wished to exclude rollover contributions from § 78-23-5(1)(b)(ii), it would have done so. The Trustee's argument that the Debtors' rollover of funds to the IRA Annuity is a "contribution" is more persuasive.

Utah Code Ann. § 78-23-5(1)(b) sets forth two exclusions from the exemption provided for in Utah Code Ann. § 78-23-5(1)(a)(x):

> (b) the exemption granted by Subsection (1)(a)(x) does not apply to:
> (i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p) of the United States Internal Revenue Code of 1986, as amended; or
> (ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy.

Utah Code Ann. § 78-23-5-(1)(b).

Subsection (b) of Utah Code Ann. § 78-23-5(1) expressly references the Internal Revenue Code definition of an alternate payee under a qualified domestic relations order, Utah Code Ann. § 78-23-5(1)(b)(i), thus reflecting the legislature's awareness and ability to make reference to definitions within the Internal Revenue Code. Subsection (b)(ii), however, makes no reference to any definitions in the Internal Revenue Code, which uses "contribution" in a variety of circumstances to describe dollar limitations on new funds placed yearly into an IRA, and has extensive regulations on rolling over ERISA qualified funds into various other tax advantaged accounts. Juxtaposed with subsection (b)(i), it must be presumed that the legislatures exclusion or omission of a reference to the Internal Revenue Code was intentional. *See* SINGER, STATUTES AND STATUTORY

CONSTRUCTION § 47:23 (6th ed. 2000)(stating that the maxim, *expressio unius est exclusio alterius*, "is strengthened where a thing is provided in one part of the statute and omitted in another."). Although this conclusion can be overcome by a strong indication of contrary legislative intent or policy, the present statute is silent on those considerations and no legislative history exists from which to make an inference. *Id.* If the Utah legislature intended to differentiate between various types of contributions, it would have done so by express reference to their definitions within the Internal Revenue Code. *See e.g.* 26 U.S.C. § 408(d)(3)(defining "Rollover contribution"); SINGER, at § 47:27 ("[W]hen the statutory term is undefined, that term must be given its ordinary and popularly understood meaning. There is a presumption that the legislature intended to use the actual words it utilizes in the statute, which in turn . . . are intended to be utilized in the ordinary and common meanings.")(internal citations omitted). Therefore, "amounts contributed" under Utah Code Ann. § 78-23-5-(1)(b)(ii) includes, but is not limited to, those amounts rolled over from ERISA-qualified plans to an IRA Annuity.

A similar situation presented itself in the interpretation of a Pennsylvania exemption statute in *In re Barshak*, 106 F.3d 501 (3d Cir. 1997), wherein the court was faced with determining if a rollover of funds from an ERISA-qualified plan to an IRA was a contribution. The significance of the decision was that if it was deemed a contribution, the debtor would only be permitted to exempt the contribution up to $15,000. The Pennsylvania statute in effect at the date of the debtor's petition, and at the date of the decision in *Barshak*, provided in pertinent part:

> (b) Retirement funds and accounts. –
> (1) Except as provided in paragraph (2), the following money or other property of the judgment debtor shall be exempt from attachment or execution on a judgment:
> (ix) Any retirement or annuity fund provided for under section 401(a), 403(a) and (b), 408 or 409 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §

> 401(a), 403(a) and (b), 408 or 409), the appreciation thereon, the income and the benefits or annuity payable thereunder. This subparagraph shall not apply to:
> (A) Amounts contributed by the debtor to the retirement or annuity fund within one year before the debtor filed for bankruptcy.
> (B) Amounts contributed by the debtor to the retirement or annuity fund in excess of $15,000 within a one-year period.

42 Pa.C.S.A. § 8124(b)(1)(1997).

Based on a plain reading of subsection (B), the *Barshak* court stated that "subsection B simply does not distinguish between 'rollover contributions' and 'contributions' as it places the limitation of the exemption on amounts 'contributed.' It would be a pure judicial construct to exclude 'rollover contributions' from subsection B, and we will not engage in that process." *Barshak*, 106 F.3d at 504. The court also acknowledged and refused to address the policy argument that the statute was enacted to exempt retirement funds, in general, from attachment and execution, and stated:

> But even if this policy argument were well-founded, a point on which we express no opinion, the plain language of subsection B compels us to reach our result. We are not free to ignore the clear language of a Pennsylvania statute merely because by rewriting the statute we arguably would act consistently with a legislative policy. In the end, the case comes down to this: we rule on the basis of what the law is rather than what a party wishes it could be.

Id. at 506 (internal citation omitted).

In 1998, the Pennsylvania legislature amended subsection (b)(1)(ix), most notably subsections (A) and (B), to read as follows:

> (A) Amounts contributed by the debtor to the retirement or annuity fund within one year before the debtor filed for bankruptcy. *This shall not include amounts directly rolled over from other funds which are exempt from attachment under this paragraph.*
> (B) Amounts contributed by the debtor to the retirement or annuity fund in excess of $15,000 within a one-year period. *This shall not include amounts directly rolled over from other funds which are exempt from attachment under this paragraph.*

42 Pa.C.S.A. § 8124(b)(1)(ix)(A)(as amended 1998)(emphasis added).[3]

In so doing the Pennsylvania legislature exercised its authority and amended the statute to expressly exclude those amounts contributed as a result of a rollover. The instant matter is no different, and absent reference in the statute to the contrary, this Court will not deviate from the statute's plain meaning and attempt to parse-out the various types of contributions defined in the Internal Revenue Code. If the Utah legislature wishes to amend Utah Code Ann. § 78-23-5(1)(b)(ii) to exclude amounts contributed by the rollover of funds into an exempt plan, it has the authority to do so. Therefore, having established that the IRA Annuity was funded by Debtors via a contribution within one year of the petition date, Debtors may not claim an exemption pursuant to Utah Code Ann. § 78-23-5(1)(a)(x).

Utah Code Ann. § 78-23-6

Debtors also argue that the property is exempt under Utah Code Ann. § 78-23-6 which

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[3] The applicable section of 42 Pa.C.S.A. § 8124(b) as amended in 1998 reads in its entirety as follows:

(b) Retirement funds and accounts. –
(1) Except as provided in paragraph (2), the following money or other property of the judgment debtor shall be exempt from attachment or execution on a judgment:
. . .
(ix) Any retirement or annuity fund provided for under section 401(a), 403(a)and (b), 408, 408A, 409 or 530 of the Internal Revenue Code of 1986 (Public law 99-514, 26 U.S.C. § 401(a), 403(a) and (b), 408, 408A, 409 or 530), the appreciation thereon, the income therefrom, the benefits or annuity payable thereunder and transfers and rollovers between such funds. This subparagraph shall not apply to:
(A) Amounts contributed by the debtor to the retirement or annuity fund within one year before the debtor filed for bankruptcy. This shall not include amounts directly rolled over from other funds which are exempt from attachment under this paragraph.
(B) Amounts contributed by the debtor to the retirement or annuity fund in excess of $15,000 within a one-year period. This shall not include amounts directly rolled over from other funds which are exempt from attachment under this paragraph.
(C) Amounts deemed to be fraudulent conveyances.

42 Pa.C.S.A. § 8124(b)(1)(ix)(A)(as amended 1998).

provides, in relevant part:

> [A]n individual is entitled to exemption of the following property to the extent reasonably necessary for the support of the individual and his dependants:
> . . .
> (3) assets held, payments, and amounts payable under a stock bonus, pension, profit-sharing, annuity, or similar plan providing benefits other than by reason of illness or disability.

Utah Code Ann. § 78-23-6.

The court in *In re Swensen*, 130 B.R. 99 (Bankr. D. Utah 1991), determined that IRAs are not exempt because they fail to fall within the parameters of "annuity or other similar plan." Debtors, however, argue that *Swensen* is inapplicable here on two grounds: first, because the statute expressly recognizes an "annuity," which exists in some form in this case as stipulated to by the parties, and; second, that from a policy standpoint an IRA should be treated in a fashion similar to other ERISA-qualified plans. Neither argument is persuasive under the plain language of the statute.

In order to accept Debtors first proposition, that an annuity is exempt to the extent it satisfies Utah Code Ann. § 78-23-6(3), it is necessary to ignore the first statement of the exemption statute which allows a person to exempt property "reasonably necessary for the support of the individual and his dependants." Utah Code Ann. § 78-23-6. In this case, Debtors have not claimed that the IRA Annuity is reasonably necessary for their support. Despite two withdrawals, Debtors did not list any regular distribution from funds in the IRA Annuity on their Schedule I - Current Income of Individual Debtors. Debtors also have not alleged that the two prepetition withdrawals were necessary for their support. Rather, Debtors argue that this Court should look forward and speculate as to their need for regular distributions in the future. This argument, however, is without merit inasmuch as it is expected that everyone will, one day, require regular distributions from their

retirement savings. To conclude otherwise would render the language in the first paragraph of Utah Code Ann § 78-23-6 superfluous and without meaning.

With respect to Debtors argument that an IRA Annuity should be treated in a fashion similar to other ERISA-qualified plans as a matter of policy, this Court declines to enter into a legislative role. Had Congress intended to equip IRA's with anti-alienation language, it could have done so. Debtors are not entitled to the benefit of an exemption claimed under Utah Code Ann. § 78-23-6. Accordingly, it is hereby

ORDERED, that the Debtors' interest in the IRA Annuity is property of the estate; and it is further

ORDERED, that the Trustee's Objection To Claimed Exemptions is SUSTAINED to the extent Debtors claim an exemption pursuant to Utah Code Ann. § 78-23-6, and that exemption is DENIED; and it is further

ORDERED, that the Trustee's Objection To Claimed Exemptions is SUSTAINED to the extent Debtors claim an exemption pursuant to Utah Code Ann. § 78-23-5(1)(a)(x), that exemption is DENIED.

DATED June 4, 2002.

Honorable Judith A. Boulden
United States Bankruptcy Judge

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I served a true and correct copy of the foregoing **MEMORANDUM DECISION AND ORDER SUSTAINING OBJECTION TO CLAIMED EXEMPTION** upon the following by mailing the same, postage prepaid, on the 5 day of **June, 2002**, to:

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