IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

In Re:

SIRAJULLAH, MOHAMMAD,

Debtor

BK# 04-41694
In Proceedings Under
Chapter 7

Michelle L. Vieira,

Trustee/Plaintiff

v.

Adv. No. 04-4207

Mohammad Sirajullah,

Debtor/Defendant

OPINION

This matter comes before the Court for trial on the Trustee's complaint to deny discharge to the debtor, Mohammad Sirajullah. The Court, being advised in the premises after reading the pleadings and pre-trial submissions and hearing testimony from witnesses Doug Haile, Tara Broy, and Mohammad Sirajullah, and reviewing all exhibits properly placed into evidence, finds and concludes as follows:

The bankruptcy laws favor the entry of a discharge to a petitioning debtor except in limited circumstances as set forth at 11 U.S.C. § 727. The Court must balance the equities between the granting of a discharge, which is preferred, against the obligation of the debtor to honestly comply with the bankruptcy process including the duty to honestly disclose all assets and liabilities to the Court. After reviewing the evidence, the Court comes to the inescapable conclusion that the debtor, Mohammad Sirajullah, has violated 11 U.S.C. § 727 (a)(2) and (a)(4).

Sections 727 (a)(2)and (a)(4) provide in relevant part as follows:

§ 727. Discharge

(a) The Court shall grant the debtor a discharge, unless-

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate....has transferred, removed, ...

(B) property of the estate, after the date of the filing of the petition;

(4) the debtor knowingly and fraudulently, in or in connection with the case-

(A) made a false oath or account[.]

The evidence presented establishes a pattern of conduct which shows a violation of both sections (a)(2) and (a)(4). The credible testimony of Doug Haile established that on June 21, 2004, the debtor met with attorney Haile to discuss the option of filing a bankruptcy petition. Mr. Haile indicated that the debtor discussed a life insurance policy during the consultation and further indicated the policy had a cash surrender value.[1] Mr. Haile advised the debtor that the cash value would not be exempt under Illinois law. The debtor also disclosed that he had two bronze statues which were valued at approximately two thousand dollars ($2,000.00). The debtor did not return to Mr. Haile. Instead, three days later, on June 24, 2005, the debtor consulted another attorney, Edward Eytalis, who was retained to file a Chapter 7 proceeding on behalf of the debtor.

Following his meeting with his attorney, the debtor contacted American General Life Insurance Company (here after referred to as "American General") and requested a maximum loan against the cash value in his life insurance policy. On July 2, 2004, American General generated check No. 0005159783 in the amount of forty three thousand four hundred sixty six dollars and ninety-five cents ($43,466.95). On July 14, 2004, the debtor met with attorney Eytalis and signed his sworn schedules. The schedules indicated that the debtor had a life insurance policy with a zero

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[1]Mr. Haile testified pursuant to a subpoena after the debtor, Mohammad Sirajullah, waived his attorney/client privilege during a deposition taken March 23, 2005.

value. Furthermore, the debtor failed to disclose the loan to American General. On July 20, 2004, the debtor, used forty one thousand four hundred fifty dollars ($41,450.00) to make a down payment on his medical liability insurance. After he spent all the loan proceeds, he notified attorney Eytalis that the money was gone, and his Chapter 7 Petition was filed on July 23, 2004. The schedules were false in that neither Schedule D or F disclosed the loan to American General, and the Statement of Financial Affairs failed to disclose the $41,450.00 down payment on an installment purchase of services made just three (3) days before the filing. These schedules were signed under oath and in violation of 11 U.S.C. § 727 (a)(4).

Furthermore, debtor failed to disclose a contingent claim for a tax refund for tax year 2003. The debtor testified that he had not filed his tax return for 2003 at the time he filed his petition. However, at the time he filed he knew that he was going to file the return and that he might receive a refund. The debtor actually filed the return two (2) days after his 341 meeting of creditors. Only after the Trustee discovered and demanded the refund did the debtor turn over the funds.

After filing his Chapter 7 petition, the debtor failed to attend his first scheduled meeting of creditors. When the debtor appeared at his rescheduled meeting, he advised his Trustee that all his property had been moved to California after the bankruptcy filing. The debtor did not disclose on Schedule B the two bronze statutes.

While an argument exists that the tax refund and statutes could have been inadvertent omissions, taking all the debtor's conduct into consideration, the Court concludes that the debtor engaged in a pattern of conduct designed to conceal and remove assets from the bankruptcy estate in violation of 11 U.S.C. § 727 (a)(2), and (a)(4).

Based on the evidence presented, the Court finds that the debtor, Mohammad Sirajullah, should be denied a discharge pursuant to § 727(a)(2) and (a)(4).

SEE WRITTEN ORDER.

ENTERED: April 20, 2005

/s/ Kenneth J. Meyers

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	In Proceedings Under Chapter 7
MOHAMMAD SIRAJULLAH, Debtor.	Case No. 04-41694
MICHELLE VIEIRA, TRUSTEE, Plaintiff, vs. MOHAMMAD SIRAJULLAH, Defendant.	Adv. No. 04-4207

ORDER

Pursuant to the Court's opinion entered this date, IT IS ORDERED that judgment shall enter in favor of the plaintiff and against the defendant on the Trustee's complaint. Accordingly, debtor, Mohammad Sirajullah, is denied a discharge under 11 U.S.C. § 727(a).

ENTERED: April 20, 2005

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE