

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

DAVID ARTHUR IZZO,

Debtor.

BK. NO. 90-21471

DECISION AND ORDER

BACKGROUND

On July 17, 1990 the debtor, David Arthur Izzo ("Izzo"), filed a voluntary petition initiating a Chapter 13 case. On January 16, 1992 the Chapter 13 case was converted to a Chapter 7 case.

Thereafter, on or about February 25, 1992 an amendment to Izzo's schedules was filed to add as personal property a 1992 Eastman Kodak Company bonus and 1991 income tax refund, each determined to be due to Izzo prior to the conversion but not payable until after the conversion. The amendment also claimed such personal property as exempt in accordance with Section 283 of the New York Debtor and Creditor Law which sets forth the exemptions available to New York residents pursuant to 11 U.S.C. §522(b).

Initially the Trustee objected to Izzo's claim that the income tax refund and Eastman Kodak Company bonus were exempt alleging that Izzo was bound by his claim of exemptions when the Chapter 13 case was originally filed and could not upon conversion claim a different set of exemptions. However, in his memorandum of law to the Court, the Trustee has withdrawn his objection on that basis citing In re Lindberg, 735 F.2d 1087 (8th Cir. 1984) and similar authority and has also withdrawn his objection to the claim of the income tax refund as exempt, since it is specifically exemptible under Section 283(2) of the New York Debtor and Creditor Law.

However, the Trustee continues to object to Izzo's claim that the Eastman Kodak Company bonus is exempt, asserting that the bonus is not an asset which can be claimed exempt under Section 283(2) of New York Debtor and Creditor Law. The Trustee cites this Court's unpublished decision in In re Hess Dell Joiner, No. 85-20183 (Bankr. W.D.N.Y. Aug. 14, 1985), *aff'd by* Civ. 85-1245 T (W.D.N.Y. Dec. 9, 1985), copies of which were attached to the Trustee's memorandum of law.

CONCLUSION

This Court adopts the prior decision of this Court, as affirmed by the District Court, Hess Dell Joiner, and holds that Izzo may not claim as exempt the Eastman Kodak Company bonus determined prior to but payable after the conversion. The bonus is not cash as defined in Section 283(2) of the New York Debtor and Creditor Law, and it is not otherwise an exempt asset under that statute.

Therefore, Izzo's claim that the Eastman Kodak Company bonus is exempt is disallowed and the bonus shall be turned over to the Trustee when it is received.

IT IS SO ORDERED.

/s/
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY COURT JUDGE

Dated: April 21, 1992