

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

GEORGIANA H. JUNGELS

Case No. 92-10186 K

Debtor

By a submission of July 12, 1995, Debtor Georgiana Jungels has sought "corrections" to this Court's Order of July 6, 1995. The Court deems this submission to be a motion for reconsideration.

For the following reasons, the motion for reconsideration is denied.

It appears that the Debtor has been engaged in a lengthy battle with the State of New York over money she claims to be owed and which, she claims, have been improperly withheld from her. That battle has been waged in other tribunals, and has never been before this Court in any manner.

The Debtor, however, erroneously asserts that this Court did in fact issue instructions to the State of New York in connection with this Chapter 13 case. That is not so. In fact, what occurred in this case occurs in every Chapter 13 case in which the Chapter 13 Debtor does not submit to the issuance of a "Wage Order" to an employer.

A Wage Order, when issued under authority of 11 U.S.C. § 1325(c), binds any entity from which the Debtor receives income, to pay all or any part of such income to the Trustee. The Chapter

13 Trustee, in every case, prepares for the Court's signature an "Order to Employer to pay to the Trustee," and he does this whether or not the Wage Order is going to issue to the Debtor's employer. That form order contains provisions compelling a wage deduction and remittance of the deductions to the Chapter 13 Trustee, provisions dissolving certain other deductions, garnishments, and wage assignments, and a provision ordering that the balance of "all earnings and wages of the debtor ... be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures."

In instances like the present case, in which the Wage Order is not going to issue to the employer, but will issue to the debtor instead, the Chapter 13 Trustee puts a black mark through the words "Employer Of" in the title of the Order -- instead of being an "Order to Employer to Pay to the Trustee" the Order becomes an "Order to Pay to the Trustee" and it is served only on the debtor. The boilerplate provisions addressing wage garnishments and the like are simply of no effect; if a debtor making payments himself or herself pursuant to such an order is having difficulty with those payments because some wage execution or other wage deduction has remained on his or her payroll check, then the burden would be upon the debtor and counsel to take suitable steps to have it dissolved or to have a suitable new order issued directly to his or her employer.¹

¹If the Wage Order had issued to the employer, on the other hand, the Chapter 13 Trustee might take steps to enforce it, to avoid employment problems for the Debtor that might otherwise arise from any efforts by the Debtor to obtain compliance.

It must be emphasized, however, that even in cases in which the Wage Order is actually served by the Chapter 13 Trustee upon the Debtor's employer, that Order is not intended to, does not, and would be jurisdictionally insufficient to, resolve any employment or compensation disputes between the Debtor and his or her employer.

That would require plenary proceedings in a competent tribunal. Hence the Order makes reference to the employer's "usual payroll procedures."

The Court has no way of knowing whether the Debtor did or did not know this fact regarding the operation and effect of this Order, but it has become evident to the Court that the Debtor has been attempting to utilize the said Order of this Court (through correspondence and otherwise as attached to her various papers submitted in recent weeks to this Court) against the State of New York. She has claimed elsewhere that the State has disobeyed this Court's Order by failing to pay her the compensation which she believes she is due. (For example, her present submission discloses that she misrepresented the effect of my Order in letters to then-Governor Cuomo and others in letters of February 8, 1992 and February 10, 1992.)

Recently she completed making the \$124.00 per week payments to the Chapter 13 Trustee that were necessary to complete her plan.

Having completed her plan, she received her bankruptcy discharge, and a standard form order was issued from this Court releasing her from the Wage Order. She sought to have that Order vacated and she

thereby brought to the direct attention of the undersigned Judge for the first time the fact that she was using the earlier Order as the basis for a claim against the State of New York, and she argued to this Court that to release the Order would be to release the State of New York from what she believes was its disobedience of this Court's Order. In response to that argument, and on the record in open court, this Court expressly told this Debtor that the earlier Wage Order was never intended to be served upon, issued to, or to otherwise direct the State of New York, and that this Court was not and would not become involved in any way in her disputes with the State of New York. I invited her to submit an amending order if she wished, and I would consider it. She did submit a proposed Order, and that is the Order that I denied in my Order of July 6, 1995, and it is my Order of July 6 that is the subject of the present motion for reconsideration.

When this Debtor filed her Chapter 13 case in this court in 1992, she was represented by an attorney, Gerald Cohen, Esq. The Court has no way of knowing what advice Mr. Cohen may or may not have given the Debtor regarding the operation and effect of the Wage Order entered in this case. But it is clear that the Debtor either did not seek or did not obtain adequate counsel regarding the operation and effect of the Wage Order before she sought to wield it as a sword against her opponent, the State of New York.

If she honestly misunderstood its operation and effect, then that is regrettable, but it is not a basis on which to accord

her relief against the Chapter 13 Trustee² or on which to lend her assistance in her efforts to obtain satisfaction from the State of New York.

Reconsideration is denied. The Trustee's Final Report and Account is approved. This case shall be closed in the ordinary manner.

SO ORDERED.

Dated: Buffalo, New York
July 14, 1995

/s/Michael J. Kaplan

U.S.B.J.

²This Debtor's complaints regarding the Chapter 13 Trustee's disbursement of monies upon a claim of the Internal Revenue Service duly filed in this case are totally without merit. Gerald Cohen's letter of December 30, 1992, was (as I understand it) honored by the Chapter 13 Trustee for the 60-day period which Cohen requested. After that, the Trustee resumed payments to the IRS until he was notified that that claim was settled. His conduct was wholly appropriate. Furthermore, any suggestion that he was under a duty to enforce the Wage Order against the State of New York is specious.