

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

LAVERNE A. SMITH, JR.

Case No. 94-10932 K

Debtor

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After examining the file in the case of Randall Brown (94-10923) as well as that of Laverne A. Smith, Jr. (94-10932), and the submissions, it is clear that

(1) Rose Marie Kruger Smith is the same person as Rose M. Reynolds.

(2) Rose Marie Kruger Smith was sent certain notices in the Randall Brown case.

(Although she was not a party-in-interest in that case, it is clear that the Clerk's office added her to the computerized mailing matrix, perhaps confusing the two files.)

(3) Rose Marie Kruger Smith was not on the original mailing matrix in Laverne Smith's case and probably was not sent the initial notice in that case which was mailed on April 8, 1994.

(4) Rose Marie Kruger Smith was added by Laverne Smith as a party-in-interest (as a co-debtor) in schedules which he filed on April 19, 1994. Her address was scheduled as "P.O. Box 39, 915 Reynolds Road, Corfu, New York 14036."

(5) That name and address were added by the Clerk to the computer data base on April 21, 1994.

(6) On April 26, 1994, the Clerk sent a notice to Laverne Smith's counsel advising that the schedules added new parties and consequently required an amendment to the list of creditors.

(7) No amendment was ever accomplished.

(8) A copy of the Laverne Smith's Discharge was nonetheless mailed by the Clerk to Rose Marie Kruger Smith at P.O. Box 39, 915 Reynolds Road, Corfu, New York 14036 on July 7, 1994.

(9) Similarly, in Laverne Smith's case a Notice of the Trustee's Intent to Abandon 816 Gabby Road, Corfu was mailed by the Clerk to Rose Marie Kruger Smith at P.O. Box 39, 915 Reynolds Road, Corfu, New York 14036 on December 23, 1994.

(10) Similarly, in Laverne Smith's case a notice of the claims bar date was mailed to Rose Marie Kruger Smith on September 10, 1996.

(11) The surplus monies notice was sent by the Bankruptcy Noticing Center (on December 15, 1997), to the very same address as the July 7, 1994, December 23, 1994, and September 10, 1996 mailings.

(12) The Notice of Final Report, etc. also was mailed to that same address, by the Bankruptcy Noticing Center on February 5, 1998.

(13) No notice sent to her was ever returned to the Clerk.

Rose Reynolds' sworn statement that she did not receive any notices in Laverne Smith, Jr.'s case until the Final Notice -- after four earlier notices were sent to her at the same address -- is patently unworthy of belief. One does not NOT receive four dispositive mailings that were never returned to the Clerk of the Court, then suddenly receive the fifth notice mailed to the same address.

Ms. Reynolds seems to have a faulty method of being sure that all mail received at

P.O. Box 39, 915 Reynolds Road, Corfu, New York 14036, is brought to her personal attention. Either that or she has committed the crime of perjury in her March 16, 1998 affidavit. The fact that she also received notices in the Randall Brown case is a red-herring. The records of the Court are clear. Her claim will be disallowed as a “late-filed” claim by a creditor who had actual knowledge or notice in time to file a timely claim. 11 U.S. C. § 726(a).<sup>1</sup>

A final word as to the Debtor’s failure to properly amend his mailing matrix. The Debtor and his Counsel are fortunate that: (1) the Clerk’s office did a far better job than it was required to do in light of Local Rules 1007-2 and 1009-1; and (2) this writer once was the Clerk of Court who persuaded the Court to adopt those Rules, and consequently is well-familiar with the intent. The intent was to lay the blame squarely at the feet of a Debtor and Counsel who filed late schedules, if the schedules contained additional parties who were not on the original mailing matrix. That does not mean that the Clerk is *required* to ignore new parties detected in a review of the schedules, but that the Clerk *could* ignore them. More importantly, the Clerk could not be faulted for failing to add to the matrix a new party whose identity is buried in late-filed schedules or in amended or supplemental schedules.

A failure of the Clerk to send notice to someone not on the matrix is the Debtor’s fault, but that fact is not a sword to be wielded by a party who is in fact noticed by the Clerk, though he has no duty so to notice.

The March 2, 1998 Proof of Claim filed on March 12, 1998, by Counsel for Rose

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<sup>1</sup>Had the case been filed after October 22, 1994, her claim would be a priority claim, which can be filed at any time before distribution. *See United States v. Vecchio (In re Vecchio)*, 20 F.3d 555 (2d Cir. 1994), and 11 U.S. C. § 726(a).

M. Reynolds on her behalf is disallowed. Assuming, as I do, that she is not a perjurer, she is admonished to be more careful in her oaths. Her Counsel is urged to make inquiry of the Clerk as to what is shown in the Court's records, before filing a client's oath that relates to those records.

SO ORDERED.

Dated: Buffalo, New York  
April 28, 1998

/s/ Michael J. Kaplan

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U.S.B.J.