

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET
SEP 11 2007

IN RE:	)	CHAPTER 13
	)	
LYNDA CHERYL DOBBINS,	)	CASE NO. 02-66806 -MHM
	)	
Debtor.	)	

ORDER ON PETITION OF WASHINGTON MUTUAL BANK
FOR UNCLAIMED FUNDS

On August 31, 2007, The Locator Services Group, Ltd. ("LSG"), on behalf of Washington Mutual Bank ("WaMu"), filed a Petition for Payment of Unclaimed Funds.¹ LSG states in the petition that it seeks payment on behalf of *Providian Bank Bankruptcy* ("Payee"), a creditor of Debtor. Payee failed to negotiate a check issued by the Chapter 13 Trustee ("Trustee") in the amount of \$5,134.15 (the "Funds"). Trustee paid the Funds into the Court's registry pursuant to 11 U.S.C. § 347(a).

Section 347(a) provides for disbursement of unclaimed funds pursuant to chapter 129 of title 28 of the United States Code. The applicable provisions of chapter 129 direct the Court to disburse unclaimed funds to the "rightful owners," 28 U.S.C. § 2041, upon "full proof of the right thereto." 28 U.S.C. § 2042. Under chapter 129's requirements and due process principles, the duty to ascertain that unclaimed funds are disbursed to the true owner lies with the Court. *Cf. Leider v. United States*, 301 F.3d 1290, 1296 (Fed. Cir. 2002). Because an application for unclaimed funds payable on a proof of claim in a bankruptcy case must be considered *ex parte*, the applicant's proof of the authority of an individual or

¹ Kim Sherrie Sawyer, General Counsel for The Locator Services Group, Ltd. ("Agent"), as attorney-in-fact for WaMu, signed a petition as an officer of Agent that seeks disbursement to The Locator Services Group Ltd. of unclaimed funds.

entity to act on behalf of the Claimant and the Claimant's proof that it is actually entitled to the funds must be clear and unambiguous. *See generally, In re Applications for Unclaimed Funds*, 341 B.R. 65 (Bankr. N.D.Ga. 2005). The showing, to be clear enough to satisfy the legal requirements for unclaimed funds' retrieval, is analogous to the chain of title on real property. If the chain is broken, the legal right to the funds is not clearly shown.

LSG filed a prior application seeking disbursement of the Funds; that prior application was denied because LSG failed to provide adequate allegations and documentation to establish that WaMu is the rightful owner of the Funds originally disbursed to Payee. In this application, LSG has again failed to establish WaMu is the rightful owner of the Funds. LSG fails to show that Payee – "Providian Bank Bankruptcy" – is the same legal entity as "Providian Financial Corporation." Accordingly, it is hereby

ORDERED that the petition of Washington Mutual Bank, through its Agent, The Locator Services Group, Ltd., is **denied**, without prejudice.

The Clerk is directed to mail copies of this Order to the persons on the attached Distribution List.

IT IS SO ORDERED, this the 10th day of September, 2007.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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