No. _____

In The

SUPREME COURT OF THE UNITED STATES

STEPHEN J. ANDERSON and
MELANIE ANDERSON
Petitioners

vs.

GARY L. RAINSDON, Chapter 7 Trustee
Appellants

On Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Ammon, ID 83406

QUESTION PRESENTED FOR REVIEW

Whether a Chapter 7 Bankruptcy Trustee is "a United States officer or employee sued in an official capacity" for the purposes of Fed. R. App. 4(a)(1)(B) such that the time for filing an appeal is sixty (60) days rather than thirty (30) days under Fed. R. App. 4(a)(1)(A).

LIST OF PARTIES

1) STEPHEN J. ANDERSON AND MELANIE ANDERSON, Appellants;

2) GARY L. RAINSDON, Chapter 7 Trustee and Appellee

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TABLE OF AUTHORITIES

OPINIONS BELOW

The Order of the United States Court of Appeals for the Ninth Circuit, filed on February 28, 2018, is reprinted in the Appendix hereto, pp.22-23.

The Opinion and Judgment entered in this case by the Bankruptcy Appellate Panel of the Ninth Circuit on August 11, 2017, is reprinted in the Appendix hereto, pp. 24 - 42.

The Bankruptcy Court's *Memorandum of Decision* on September 16, 2016, is reprinted in the Appendix hereto, pp. 43 - 58.

The Bankruptcy Court's *Order Granting Trustee's Motion for Turnover* on September 16, 2016, is reprinted in the Appendix hereto, pp. 59-60.

JURISDICTION

The United States Bankruptcy Court had initial jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(1).

Appellants filed their *Notice of Appeal* on September 30, 2016 pursuant to Fed. R. Bankr. P. 8002. The Appellants appealed to Ninth Circuit Bankruptcy Appellate Panel ("BAP"), which had jurisdiction pursuant to 28 U.S.C. § 158(b)(1).

After the entry of the Opinion and Judgment entered by the BAP on August 11, 2017, Appellants filed a Notice of Appeal with the Ninth Circuit Court of Appeals on October 10, 2017. In filing the Notice of Appeal at this time, Appellants relied on the provisions of Fed. R. App. 4(a)(1)(B) and 28 U.S.C. § 2107(b) maintaining that the Chapter 7 Bankruptcy Trustee is a United States officer or employee sued in an official capacity.

The United States Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254.

STATUTES AND RULES INVOLVED IN CASE

28 U.S.C. §2107(a) and (b)

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is-

(1) the United States;

(2) a United States agency;

(3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

Fed. R. App. 4(a)(1)(A)

In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal must be filed with the district clerk within 30 days after entry of the judgment or order appealed from."

Fed. R. App. 4(a)(1)(B)

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

Appellants are husband and wife residing in Idaho Falls, Idaho. Appellants filed for bankruptcy under Chapter 7 on September 9, 2015. Appellants are both licensed realtors in the State of Idaho. Appellants are currently employed by Bastille Enterprises, Inc. ("Bastille"), but work under Win Realty, LLLP, d/b/a Keller Williams Realty East Idaho in Idaho Falls, Idaho ("Keller Williams"). Appellants are members of Mike Hicks' team at the Keller Williams.

Appellants were the realtors involved in the thirteen (13) real estate transactions, which were contracted before the filing of bankruptcy but did not close until after bankruptcy was filed. The Sales Contracts were the contracts of Keller

Williams, not the Appellants individually. The Sales Contracts closed after Appellants filed for bankruptcy on September 9, 2015.

While Appellants are members of Mike Hicks' team with Keller Williams, Appellants are currently employed by Bastille Enterprises, Inc., an Idaho Corporation of which of which Appellant Melanie Anderson is the sole shareholder. Prior to filing the bankruptcy, Appellants were employed by another company owned solely by Debtor Melanie Anderson, named Melanie Anderson Realty, Inc., another Idaho corporation. After filing for bankruptcy, Debtor Melanie Anderson wanted a fresh start and discontinued doing business under Melanie Anderson Realty, Inc. On September 17, 2015, Debtor Melanie Anderson created Bastille.

Under the contract with Keller Williams, when a transaction is completed by Appellants, Keller Williams is paid the commission for the transaction. Keller Williams would then pay Melanie Anderson Realty, Inc., a percentage of the commission, 45 to 60% depending on the circumstances. Specifically, if one of the Appellants acts as the agent for both the seller and the buyer, then Melanie Anderson Realty, Inc. was paid up to 60% of the amount of the commission. Otherwise, Bastille was generally only paid 45% of the amount of the commission.

After filing for bankruptcy, this same business arrangement continued, except all payments for Appellants services were paid by Keller Williams to Bastille instead of Melanie Anderson Realty Inc. Appellants' corporations would pay their business expenses with these funds and then pay Appellants a monthly salary or a distribution.

For the thirteen (13) transactions that closed after the bankruptcy, Bastille was paid by Keller Williams the total amount of $52,485.92.

B. The Bankruptcy Court Proceedings

The U.S. Trustee, Gary L. Rainsdon ("Trustee") filed a *Motion for Turnover* requesting the Court to order Appellants to surrender the sum of $52,485.92 as assets of the estate. Appellants objected to the Motion and, among other things, argued that, under the pertinent Idaho law, the commissions in question were not earned until closing, which occurred after the bankruptcy filing, and therefore were not part of the bankruptcy estate. The bankruptcy court conducted an evidentiary hearing concerning the Motion on July 6, 2016. Thereafter, the bankruptcy court issued its *Memorandum of Decision* on September 16, 2016. *See* Appendix, pp. 43-58. The Court entered the *Order Granting Trustee's Motion for Turnover* on September 16, 2016. Appellants timely filed their Notice of Appeal on September 30, 2016. *See* Appendix, pp. 59-60.

C. The Bankruptcy Appellate Panel Proceedings

The matter was appealed to the Ninth Circuit Court of Appeals Bankruptcy Appellate Panel ("BAP") and, after oral argument, the BAP issued *Opinion and Judgment* on August 11, 2017 in which the Court upheld the Bankruptcy Court's Order on Motion for Turnover. See Appendix, pp. 42-58.

D. The Ninth Circuit Court of Appeal Proceedings.

Appellants filed a Notice of Appeal to the Ninth Circuit Court of Appeal on October 10, 2017. On October 18, 2017, the Ninth Circuit Court submitted an Order

to Show Cause as to why the matter should not be dismissed for failure to file the Notice within thirty (30) days. The Appellants submitted their Response to Order to Show Cause. The Ninth Circuit issued its Order dismissing the appeal for lack of jurisdiction on February 28, 2018. *See* Appendix, pp. 22-23.

REASON WHY CERTIORARI SHOULD BE GRANTED

I. **Review is Warranted Because the Ninth Circuit has decided an important question of federal law that has not been, but should be, settled by, this Court, which is whether a Chapter 7 Bankruptcy Trustee is a "United States officer or employee sued in an official capacity" for the purposes of Fed. R. App. 4(a)(1)(B) such that the time for filing an appeal is sixty (60) days rather than thirty (30) days under Fed. R. App. 4(a)(1)(A).**

Fed. R. App. 4(a)(1)(A) specifically states: "In a civil case, *except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c),* the notice of appeal must be filed with the district clerk within 30 days after entry of the judgment or order appealed from." (Emphasis added). As set forth in this rule, the general rule is that the time for filing a notice of appeal is 30 days unless one of the other rules listed therein is applicable.

Appellant's position is that Rule 4(a)(1)(B) sets for the applicable time rule for filing the notice of appeal in this case. This rule provides:

> (B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:
> (i) the United States;
> (ii) a United States agency;
> (iii) a United States officer or employee sued in an official capacity; or
> (iv) a current or former United States officer or employee sued in

> an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

See also 28 U.S.C. § 2107(b).

The Appellee in this case, Gary L. Rainsdon, is the Trustee over Appellant's Chapter 7 Bankruptcy as assigned by the United States Trustee's Office and has been a party to this matter in every stage of the proceedings. Appellants submit that, as such, he is a "United States officer or employee sued in an official capacity" under the applicable statute and rules. Based upon this understanding of the rules, Appellants filed their Notice of Appeal to the Ninth Circuit on October 10, 2017, which is 60 days after the date of the BAP's decision. Thereafter, the Ninth Circuit dismissed the appeal on the grounds that the Notice of Appeal was not timely filed within thirty days of the BAP's decision and based its decision on *In re Serrato*, 117 F.3d 427 (9th Cir. 1997). *See* Appendix, pp. 23-24.

In *In re Serrato*, the Ninth Circuit stated that a Bankruptcy Trustee was a "court-appointed bankruptcy trustee" and—citing to no supporting authority—found that the Trustee was an "officer of the courts" rather than an "officer of the United States." *See* 117 F.3d at 428. Based upon this finding the Ninth Circuit then held "the appropriate notice period was 30 days, not 60, and appellants did not timely file their notice of appeal." *Id.*

This holding clearly ignores the pertinent law pertaining to United States Trustees and the interim trustees who they appoint to serve in bankruptcy cases. Contrary to the Ninth Circuit's decision in *Serrato*, a Chapter 7 Trustee is <u>not</u> appointed

by the bankruptcy court, but rather by the U.S. Trustee. *See* Handbook for Chapter 7 Trustees, Chapter 3, ¶ A.[1] Thus, a Chapter 7 Trustee is not an officer of the Court as erringly stated by the Ninth Circuit.

Furthermore, the Ninth Circuit's holding ignores the relationship between the United States Trustee and the Chapter 7 Trustees. Pursuant to 28 U.S.C. § 581, the United States Attorney General appoints one United States trustee for regions composed of Federal judicial districts including the relevant judicial District of Idaho. *See* 28 U.S.C. § 581(18). Furthermore, each U.S. Trustee is under the general supervision of the Attorney General. *See* 28 U.S.C. § 586(c). The United States trustee and assistant United States trustee are required to take an oath to execute faithfully his or her duties before taking office. *See* 28 U.S.C. § 583. So, the U.S. Trustee is clearly an officer of the United States.

Under 28 U.S.C. § 586(a)(1), the U.S. Trustee has the duty to "establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11." The U.S. Attorney General prescribes the rule qualifications for membership on the private panel of Chapter 7 Trustees. *See id.*, § 586(d). Moreover, under § 586(a)(3), the U.S. Trustee has the duty of supervising the administration of Chapter 7 cases, and whenever the U.S. Trustee considers it appropriate, by

> (A) (i) reviewing, in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for

[1] The Handbook for Chapter 7 Trustees may be found at: https://www.justice.gov/ust/file/handbook_for_chapter_7_trustees.pdf/download

> compensation and reimbursement under section 330 of title 11; and (ii) filing with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application;

28 U.S.C. §586(a)(3)(A). As shown by these statutes, all Chapter 7 Trustees are under the direct supervision of the U.S. Trustee of the respective judicial district, even as it pertains to their appointment and applications for compensation.

The U.S. Trustee also provides ongoing training for all Chapter 7 Trustees. According to the Handbook for Chapter 7 Trustees:

> The training should help trustees keep abreast of recent developments in bankruptcy law and issues which effect chapter 7 estate administration. Training also covers USTP standards and other requirements for trustee performance, including record keeping and reporting. The training for new trustees includes initial training prior to case assignments and periodic one-on-one training thereafter as appropriate. Trustees may request specific types of training from the United States Trustee.

Handbook for Chapter 7 Trustees, Chapter 2, ¶ E. Notably, not only is U.S. Trustee over the hiring, training, and assigning cases to, and supervising, and compensation of the Chapter 7 Trustee, but they also control the termination of such individuals. Section 586(d)(2) of 28 U.S.C. provides that if a Chapter 7 Trustee appointed under subsection (a)(1) is terminated or ceases to be assigned to cases filed under the bankruptcy code, that person may

> obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1) . . . after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative

> remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

28 U.S.C. § 586(d)(2). As shown by this statute, a Chapter 7 Trustee must exhaust his administrative remedies with the U.S. Trustee's office before he can file with the District Court to review the agencies' decision to terminate his appointment. *See id.* All of the foregoing strongly suggest that a Chapter 7 Trustee is an officer or employee of the United States Trustee under Fed. R. App. 4(a)(1)(B).

Moreover, the trustee appointed in a Chapter 7 case is often referred interchangeably as the United States Trustee in the bankruptcy statutes and rules. For example, 11 U.S.C. § 343, the code provides:

> The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

Likewise, Rule 9012(a) of the Federal Rules of Bankruptcy Procedure states:

> (a) PERSONS AUTHORIZED TO ADMINISTER OATHS. The following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk, deputy clerk, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country.

In Section 343 and in Rule 9012(a), there is a clear reference to the "United States trustee" being authorized to administer oaths. In practice, however, the Chapter 7 Trustee <u>is</u> the officer who conducts the 341 hearings and also administers the oaths to the debtors. Appellants submit that this is because they are clearly acting on behalf of

the U.S. Trustee in the bankruptcy case.

Another example is found in 11 U.S.C. § 704(b), which expressly requires the United States Trustee to review all materials filed by the debtor, not later than 10 days after the date of the first meeting of the creditors, and file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b). Again, this task is performed by the Chapter 7 trustee as opposed to the U.S. Trustee himself.

While a Chapter 7 Trustees have fiduciary duties to the various parties in interest in a bankruptcy case with some discretion to exercise appropriate business and professional judgment in performing his fiduciary duty, *see* Handbook for Chapter 7 Trustees, Chapter 1, ¶ A, they act under the supervision of and oftentimes on behalf of the United States Trustee. As such, they should be considered as officer or employee of the United States under Fed. R. App. 4(a)(1)(B).

In this case, the Trustee, acting in his official capacity, filed a *Motion for Turnover* in the bankruptcy court. The bankruptcy court granted this motion and Appellants appealed that decision to the Bankruptcy Appellate Panel for the Ninth Circuit ("the BAP"). The BAP denied Appellant's appeal and Appellants appealed the BAP's decision to the Ninth Circuit.

Based upon the foregoing, the time for filing is 60 days under Rule 4(a)(1)(B) not 30 days under Rule 4(a)(1)(A) and the Ninth Circuit erred in dismissing Appellants' appeal.

CONCLUSION

For all of the reasons stated herein, Appellants respectfully request this Court to grant a Writ of Certiorari.

DATED this 25th day of May, 2018.

Aaron J. Tolson

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
FEB 28 2018
MOLLY C. DWYER, CLERK U.S. COURT OF APPEALS

In re: STEPHEN J. ANDERSON and MELANIE ANDERSON, AKA Melanie Ihler, AKA Melanie Morris,
Debtors.

No. 17-60072

BAP No. 16-1316

STEPHEN J. ANDERSON and MELANIE ANDERSON,
Appellants,
v.

GARY L. RAINSDON,
Chapter 7 Trustee,
Appellee.

ORDER

Before: CANBY, TROTT, and WATFORD, Circuit Judges.

Upon review of the responses to this court's October 18, 2017 order to show cause, we dismiss this appeal for lack of jurisdiction. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1); *In re Serrato*, 117 F.3d 427 (9th Cir. 1997).

DISMISSED.

UNITED STATES BANKRUPTCY APPELLAT PANEL OF THE NINTH CIRCUIT

In re:
STEPHEN J. ANDERSON;
MELANIE ANDERSON, Melanie Ihler, AKA Melanie Morris

Debtors

BAP No. ID 16-1316-JuFB

STEPHEN J. ANDERSON
MELANIE ANDERSON

Bankr. No.: 4:15-bk 15-40878-JDP

v.

GARY L. RAINSDON,

Appellee

OPINION

Argued and Submitted July 27, 2017
at Pasadena, California

Filed – August 11,2017

Appeal from the United States Bankruptcy Court
For the District of Idaho

Honorable Jim D. Pappas, Bankruptcy Judge, Presiding

Appearances: Aaron J. Tolson of Tolson & Wayment, PLLC argued for appellants, Stephen J. Anderson and Melanie Anderson; Jason R. Naess of Parsons, Smith, Stone, Loveland & Shirley, LLP argued for appellee, Gary L. Rainsdon, chapter 7 trustee.

Before: JURY, FARIS, and BRAND, Bankruptcy Judges. JURY, Bankruptcy Judge:

Appellants/debtors, Stephen J. Anderson and Melanie Anderson (Debtors), pose the issue in this appeal as an open question of law which splits the two divisions of the Idaho Bankruptcy Court. Debtors argue that because under Idaho law a licensed real estate professional does not earn a right to a sales commission until the sales transaction closes (which took place in this case after the petition

date), such commission is not property of the estate and belongs to Debtors. According to Debtors, this is the position of the trustees in the Boise Division. To the contrary, in the Pocatello Division, where this case arises, trustees assert that such commissions are estate property, following our decision in Tully v Taxel (In re Tully), 202 B.R. 481, 483 (9th Cir. BAP 1996), a case arising in California where under state law the right to a commission does not require the transaction to close.

Despite Debtors' assertion that this is an open question, we hold that the Ninth Circuit in Jess v Carey (In re Jess), 169 F.3d 1204 (9th Cir. 1999), has answered the question, ruling that § 541[2] trumps any distinction in state law in this instance, its broad sweep making the contingent right to a commission estate property. Accordingly, WE AFFIRM.

I..FACTS[3]

The facts are not in dispute. Debtors filed their chapter 7 petition on September 9, 2015 (Petition Date). Debtors are both licensed real estate agents. As agents, they were required to work under a broker. Accordingly, they associated with Keller Williams Realty East Idaho (Keller), as part of the Mike Hicks Realty Group (Hicks) team. Under Keller's business model, Debtors spent the bulk of their time interacting with buyers and sellers while Hicks' staff at Keller prepared the marketing materials, photographed the properties, and performed other administrative tasks. Keller also provided training to its agents. For these services, Debtors paid Keller a fee called a " cap."

Per their agreement with Keller, when Debtors earned a real estate commission, it was paid directly to Keller. In turn, Keller retained 36% of the commission until the $18,000 cap was met each year. 572 B.R. 746 After subtracting the amount applied to Debtors' cap, Keller then cut two checks to

[2] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
[3] We borrow from the facts set forth in the bankruptcy court's published memorandum decision at 558 B.R. 369 (Bankr. D. Idaho 2016).

split the balance of the commission according to the Group/Team Contract. When Debtors acted as the buyer's agent, the contract provided for a 60/40 split between Debtors and Hicks, respectively. When Debtors were the listing agents, the contract provided for a 55/45 split between Debtors and Hicks, respectively.

Keller encouraged its agents to have a separate business entity into which the earned commissions were paid. The entity then paid the commission to the real estate agents as a salary. Debtors organized a company alled Melanie Anderson Realty, Inc., but closed it before the Petition Date. After the Petition Date, Debtors created a new business entity called Bastille Enterprises, Inc. (Bastille). Melanie is the sole shareholder of Bastille, while Stephen is an employee. Bastille pays Debtors' business expenses and some of their personal expenses. Bastille also pays a salary to both Stephen and Melanie. Under the contract between Keller and Debtors, after Keller receives a commission, Keller pays Debtors' share to Bastille.

On the Petition Date, Debtors were involved in thirteen real estate transactions where a sales contract had been executed by the buyer and seller, but the sale had yet to close. Each transaction closed postpetition and Keller paid Debtors' share of the commission to Bastille.

On April 6, 2016, appellee/chapter 7 trustee, Gary L. Rainsdon (Trustee), filed a motion for turnover of $52,485.92 in commissions that were paid to Debtors through Bastille.[4] Trustee argued that the commissions were property of Debtors' bankruptcy estate because they had performed the work necessary to earn the commissions prior to the Petition Date. Therefore, the commissions were

[4] Through the thirteen transactions, Debtors had earned approximately $105,222.00 in commissions. The amount of $52,485.92 is the "Associate Commission" amount included in the Associate Detail exhibits. The difference was paid to Hicks. Trustee maintained that the $52,485.92 amount was the amount he could prove Debtors had control or custody over during the pendency of the bankruptcy case. He did not pursue the remaining balance of the commissions which went to Hicks, but reserved his right to do so.

subject to turnover under § 542(a). In response, Debtors argued that the commissions were not part of their estate because the commissions were paid to Bastille. Alternatively, Debtors asserted that if the commissions were part of their bankruptcy estate, a portion of the work to earn the commissions was performed postpetition. Debtors requested the bankruptcy court to apportion the commission between the pre-and postpetition period and order turnover of the portion earned prepetition.

After an evidentiary hearing, the bankruptcy court ordered simultaneous post-hearing briefing of the issues and took the matter under advisement.

The bankruptcy court issued a memorandum decision, finding that the commissions were property of Debtors' bankruptcy estate under § 541(a)(1) because all Debtors' acts necessary to earn the commissions were performed prepetition and therefore were rooted in the pre-bankruptcy past. The court also noted that under Idaho law, only a licensed real estate broker or salesperson is entitled to collect a real estate commission. Idaho Code § 54-2054. Therefore, as the licensed agents, the commissions belonged to Debtors, not to Bastille. The bankruptcy court concluded: " [T]hat Debtors had entered into a contract with Keller to have their commissions paid to Bastille, a corporation they created after their bankruptcy filing, does not alter the result. Under § 542(a), a debtor must 572 B.R. 747 turn over possession, **or account to the trustee**, for any property of the estate." 558 B.R. at 374.

Finally, the court found that Debtors produced no evidence which would allow it to apportion the commissions between pre-and post-bankruptcy efforts. As a result, Debtors did not show any portion of the commissions should be excluded from the estate under the " personal services" exception in § 541(a)(6). Therefore, the bankruptcy court ordered Debtors to turn over $52,485.92 to Trustee. Debtors filed a timely appeal from that order.

II. JURISDICTION

The bankruptcy court had jurisdiction over this proceeding under 28 U.S.C. § § 1334 and 157(b)(2)(E). We have jurisdiction under 28 U.S.C. § 158.

III. ISSUE

Whether the commissions, which were paid on contracts entered into prepetition and deposited into the account of Bastille postpetition, should be considered property of Debtors' estate as of the date of the petition, thereby making them subject to turnover under § 542(a).

IV. STANDARD OF REVIEW

Whether an asset is estate property is a conclusion of law reviewed de novo. Groshong v. Sapp (In re MILA, Inc.), 423 B.R. 537, 542 (9th Cir. BAP 2010).

V. DISCUSSION

A. Legal Standards

Under § 542(a), an entity " in possession, custody, or control, during the case, of property that the trustee may use . . . shall deliver the property to the trustee, and account for, such property or the value of such property," subject to certain exceptions.

Section 541(a) provides that the filing of a bankruptcy case creates an estate. The estate is " comprised of all the following property, wherever located any by whomever held: (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case." This definition of property of the estate has been broadly construed to encompass a debtor's contingent interest in future payments, as long as that interest is " sufficiently rooted" in the debtor's prepetition past, even if that interest is reliant on future contingencies that have not occurred as of the filing date. Segal v. Rochelle, 382 U.S. 375, 379-80, 86 S.Ct. 511, 15 L.Ed.2d 428 (1966). In this Circuit, any contingent interest of the

debtor " sufficiently rooted in the pre-bankruptcy past" is estate property, even if the contingency is not satisfied until after the bankruptcy is filed. See Neuton v. Danning (In re Neuton), 922 F.2d 1379, 1382-83 (9th Cir. 1990) (beneficial interest in an inter vivos trust constituted property of the bankruptcy estate as debtor's interest vested upon the death of the preceding beneficiary which occurred after the bankruptcy petition was filed); Rau v. Ryerson (In re Ryerson), 739 F.2d 1423, 1425-26 (9th Cir. 1984) (contingent interests in payments due under a prepetition contract were property of the estate and passed to the trustee).

An exception to the broad definition of property of the estate is the postpetition earnings exception under § 541(a)(6). That section provides that earnings from services performed by an individual debtor after the commencement of the case are not property of his or her estate. In considering whether the postpetition earnings exception applies, we first determine whether any postpetition services are necessary to obtain the payments 572 B.R. 748 at issue. In re Jess, 169 F.3d at 1208 (citing Towers v. Wu (In re Wu), 173 B.R. 411, 414-15 (9th Cir. BAP 1994) (citing In re Ryerson, 739 F.2d at 1426)). " If not, the payments are entirely 'rooted in the pre-bankruptcy past' and the payments will be included in the estate." Id. at 1208; see also Tully v Taxel (In re Tully), 202 B.R. 481, 483 (9th Cir. BAP 1996) (citing Segal, 382 U.S. at 380). " [W]here the debtor receives a commission post-petition but essentially fulfilled all of his obligations for that commission pre-petition, the commission will be deemed property of the estate." In re Tully, 202 B.R. at 483. Given this background, in determining whether the commissions at issue here should be included in Debtors' estate, the touchstone is the Supreme Court's decision in Segal. There, the Supreme Court confronted the question whether the estate or the debtors owned a loss carryback tax refund claim arising from losses generated during the year of the bankruptcy filing. The Supreme Court determined that the refund claim was

estate property based on its conclusion that the claim was " sufficiently rooted in the pre-bankruptcy past and [was] little entangled with the bankrupts' ability to make an unencumbered fresh start." 382 U.S. at 380. " The Code follows Segal insofar as it includes after-acquired-property 'sufficiently rooted in the prebankruptcy past' but eliminates the requirement that it not be entangled with the debtor's ability to make a fresh start." Johnson v. Taxel (In re Johnson), 178 B.R. 216, 218 (9th Cir. BAP 1995) (quoting In re Ryerson, 739 F.2d at 1426). Therefore, the test for purposes of deciding whether a postpetition payment on a prepetition contract is excluded from property of the estate under the earnings exception is whether the payment is " sufficiently rooted in the pre-bankruptcy past" so as to be included in the bankruptcy estate.

B. Analysis

Debtors base their right to the commissions on two legal theories. First, they contend that, under Idaho law, their commissions were not earned until the purchaser completed the transaction by closing title. And this did not happen until after their petition was filed. Implicitly, they suggest that they had no legal or equitable interests in the commissions on the Petition Date and that the timing of the closing was dispositive.

Second, they argue that the bankruptcy court erred by disregarding Debtors' business agreement with Keller and with Debtors' corporation Bastille. Debtors maintain that the real estate sales contracts were property of Keller and not Debtors individually. When the transactions closed, Keller was paid the commission in question. Keller, in turn, paid Bastille, Debtors' corporation, and Debtors were paid either a salary or a distribution from Bastille. Accordingly, Debtors maintain that by the time they received any portion of the commissions, it constituted postpetition earnings which are not subject to turnover under § 541(a)(6). We are not persuaded by Debtors' arguments. "

Property interests are created and defined by state law." Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). However, what constitutes property of Debtors' bankruptcy estate is not determined by looking solely at Idaho law. Instead, we look at Idaho law to determine when and how Debtors earned the real estate commissions and then apply § § 541(a)(1) and (a)(6) to determine whether the commissions are estate property. Generally, under Idaho law, a real estate broker is entitled to a commission when he or she (a) produces a purchaser ready, willing, and able to buy on the terms fixed by the owner; (b) the purchaser 572 B.R. 749 enters into a binding contract with the owner to do so; and (c) the purchaser completes the transaction by closing the transaction in accordance with the contract terms. Margaret H. Wayne Tr. v. Lipsky, 123 Idaho 253, 846 P.2d 904, 911 (Idaho 1993). Debtors' interest in receiving a commission upon the satisfaction of all three prongs set forth in Lipsky is a state law property right. See In re John Chezik Imports, Inc., 195 B.R. 417, 420 (Bankr. E.D. Mo. 1996).

Whether Debtors' state law property right in the commissions is estate property is answered by the analysis and reasoning set forth in Jess. There, the debtor-attorney argued that because he had no cause of action which would have allowed him to sue his client for any portion of his contingency fee on the petition date, the later-realized contingency fee was not property of the estate. After a hearing before the bankruptcy court, the debtor was ordered to turn over 78% of the fee to the estate, the amount attributable to the attorney-debtor's prepetition performance. The Ninth Circuit affirmed, holding that: " Although [the debtor] may not have been able to sue his client for a portion of his fee at the time he filed his bankruptcy petition, he had an interest in the fee attributable to pre-petition work on the case." 169 F.3d at 1208. This interest, the court stated, was " clearly property of the estate under section 541(a)(1)." Id.

Here, like the debtor-attorney in Jess, Debtors entered into the real estate sale contracts prepetition. Under Idaho law, their right to receive the commissions was contingent upon the sales closing. Therefore, on the Petition Date, like Mr. Jess, Debtors had, at least, a contingent interest in the commissions that was attributable to their prepetition work. Id. at 1207-08; see also In re Neuton, 922 F.2d at 1382-83; In re Ryerson, 739 F.2d at 1425-26. This contingent interest which was attributable to their prepetition work is property of their estate under the broad parameters of § 541(a)(1).

Unlike Mr. Jess, Debtors presented no evidence at trial that shows they performed services postpetition in connection with the closings. This lack of evidence prevented the bankruptcy court from apportioning the commissions between pre-and postpetition work. Accordingly, the commissions, although received postpetition, were sufficiently rooted in the pre-bankruptcy past as to constitute property of Debtors' estate.

Finally, contrary to Debtors' arguments, the bankruptcy court considered Debtors' relationships with Keller and Bastille in deciding whether the commissions were property of Debtors' estate. Under Idaho law, only a licensed real estate broker or salesperson is entitled to collect a real estate commission. Idaho Code § 54-2054. And, under Idaho law, only an individual may hold a real estate license. Idaho Code § § 54-2004; 54-2002. Melanie testified that the commissions were earned by her and her husband. She also testified that she had never heard of a corporation earning a real estate commission. Her testimony was thus consistent with Idaho law.

Because Debtors were the licensed agents, only Debtors could have a legal or equitable interest in the commissions as of the commencement of their case. Bastille legally could not earn the commission. Furthermore, Bastille was not formed when Debtors filed their petition, and property of the estate is determined as of the petition date.

In addition, as the bankruptcy court held, Debtors' contract with Keller to have their commissions paid to Bastille does not change the result under § 542(a). Under the statute, Debtors must turn over property in their possession, and **account to the trustee**, for any property of the estate. Section 542(a) does not require current 572 B.R. 750 possession of the property. Newman v. Schwartzer (In re Newman), 487 B.R. 193, 200 (9th Cir. BAP 2013).

Debtors also argue that § 542 as applied in this case violates the Thirteenth Amendment's prohibition against involuntary servitude because the statute, in effect, forces Debtors to close the transactions in question for the sole benefit of their creditors after filing for bankruptcy. They further contend that § 542 violates their right to equal protection under the law. These arguments are raised for the first time on appeal. Therefore, we do not address them. See Cold Mountain v. Garber, 375 F.3d 884, 891 (9th Cir. 2004).

VI. CONCLUSION

In sum, for the reasons stated, we AFFIRM. The bankruptcy court properly determined that the $52,485.92 in real estate commissions paid by Keller to Debtors postpetition constituted property of their estate. Therefore, Debtors are required to turn over the commissions to Trustee under § 542(a).

-------- Notes: [1]Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. § § 101-1532. [2]We borrow from the facts set forth in the bankruptcy court's published memorandum decision at 558 B.R. 369 (Bankr. D. Idaho 2016). [3]Through the thirteen transactions, Debtors had earned approximately $105,222.00 in commissions. The amount of $52,485.92 is the " Associate Commission" amount included in the Associate Detail exhibits. The difference was paid to Hicks. Trustee maintained that the $52,485.92 amount was the amount he could prove Debtors had

control or custody over during the pendency of the bankruptcy case. He did not pursue the remaining balance of the commissions which went to Hicks, but reserved his right to do so. --------

UNITED STATES BANKRUPTCY
BANKRUPTCY APPELLAT
PANEL OF THE
NINTH CIRCUIT

In re:
STEPHEN J. ANDERSON;
MELANIE ANDERSON, Melanie
Ihler, AKA Melanie Morris

Debtors

BAP No. ID6-1316-JuFB

STEPHEN J. ANDERSON
MELANIE ANDERSON

Bankr. No.: 4:15-bk-
40878-JDP
Chapter 7

v.

GARY L. RAINSDON,

August 11, 2017

Appellee

JUDGMENT

ON APPEAL from the United States Bankruptcy court for Idaho – Pocatello.

THIS CAUSE came on to be heard on the record from the above court.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Panel that the judgment of the Bankruptcy Court is AFFIRMED.

FOR THE PANEL,

Susan M. Spraul
Clerk of Court
By: Vincent Barbato, Deputy Clerk
Date: August 11, 2017

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re:

Stephen J. Anderson and Melanie Anderson,

Debtors.

Bankruptcy Case
No. 15-40878-JDP

MEMORANDUM OF DECISION

Appearances:

Aaron J. Tolson, TOLSON & WAYMENT, PLLC, Ammon, Idaho, Attorney for Stephen and Melanie Anderson, Debtors.

Jason R. Naess, PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP, Burley, Idaho, Attorney for Gary L. Rainsdon, Trustee.

Introduction

In this chapter 7[5] case, trustee Gary L. Rainsdon ("Trustee") filed a motion for turnover ("the Motion") requesting that the Court order debtors Stephen J. Anderson and Melanie Anderson ("Debtors") to pay over certain real estate commissions they had received to Trustee for distribution to creditors. Dkt. No. 43. Debtors ojected to the Motion. Dkt. No. 44. The Court conducted an evidentiary hearing concerning the Motion on July 6, 2016, ordered simultaneous post-hearing briefing of the issues, and took the issues under advisement, Dkt. No. 56. Having now considered the evidence, testimony and record in this case, the arguments of the parties, as well as the applicable law, this Memorandum constitutes the Court's finding of face, conclusions of law, and decision concerning the Motion. Fed. R. Bankr. P. 7052; 9014.

[5] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S. C. §§ 101-1532.

Facts

Debtors are both licensed real estate agents. During the relevant period, they worked together for an agency, Keller Williams Realty East Idaho ("Keller"), as part of Mike Hicks' sales "team". As explained at the hearing, although Debtors both hold realtor's licenses, in order to sell real estate, they need to be associated with a licensed broker, hence their affiliation with Keller. [6]

As licensed realtors, Debtors work to both connect buyers with desire real estate, as well as to identify sellers and list their real property for sale through Keller. The business model employed by Keller is different than that utilized by most agencies. Rather than Debtors having to manage all of the various tasks associated with the buying and selling of real estate for their clients, at Keller, Debtors spend the bulk of their time interacting with buyers and sellers. Other duties, like preparation of marketing materials, property photography, document production, signature acquisitions, and such are done by Hicks' staff at Keller. Keller also provides training to its realtors.

For these services, Debtors pay Keller a fee called a "cap". Because Debtors work jointly, they split one cap between them. Their current cap is $18,000 yearly, and their anniversary date is April 1st. When Debtors arrange a sale of real estate, and a commission is owed, that commission is paid directly to Keller, which retains 36% of it until the full $18,000 cap is met each year. After subtracting the amount to be applied to Debtors' cap, Keller then cuts two checks to split the balance of the commission according to the Group/Team Contract in place. Debtors' contract provides that when they act as the buyer's agent, they get 60% of the net commission, while Hicks gets 40%. Ex. 115. When they are the listing agents in a transaction, Debtors get 55% and Hicks gets 45%. *Id.*

As part of its business model, Keller encourages its agents to have a separate business entity

[6] Debtors list themselves as "Self Employed" on schedule I. Bankruptcy schedules, Ex. 101 at 43.

into which the earned commissions are paid, which in turn pays the realtor a salary. Prior to their bankruptcy filing, Debtors had organized, owned, and oerated a company they called Melanie Anderson Realty, Inc. This entity was closed out shortly before the bankruptcy petition was filed. However, following the filing of the petition, on September 17, 2015, Debtors created a new business entity called Bastille Enterprises, Inc. ("Bastille"). Ex. 111. Melanie Anderson is the sole shareholder of Bastille, while Stephen Anderson is an employee. Bastille pays certain business expenses, as well as some of Debtors' personal expenses. Bastille also pays a salary to both Stephen and Melanie. Accordingly, when Keller receives and disburses a commission, Debtors' share of that commission is paid to Bastille, rather than to them personally. *See* Exs. 113, 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, 221, and 223.

Debtors filed a chapter 7 petition on September 9, 2015. Dkt. No. 1. At that time, Debtors, as realtors were involved in thirteen real estate transactions that were "in process," meaning that a sales contract had been executed by the buyer and seller, but the sale had yet to close. After varying amounts of time and efforts by Debtors, each of these transactions eventually closed, and Keller paid Debtors' share of the commission to Bastille as discussed above.

Analysis and Disposition

I.

Trustee demanded that Debtors give him the sales commissions generated by those transactions pending on the date of their bankruptcy, and which closed thereafter. On April 6, 2016, Trustee filed the Motion. In it, he does not seek turnover of the full agents' commission on the sales, but rather, he seeks only the portion paid to Bastille.[7]

[7] Likely because they never had possession of the funds, Trustee does not seek turnover from Debtors of the portion of the commissions paid by Keller to Hicks, although an argument could perhaps be made that they, too, are estate

Property Address	Contract Date	Closing Date	Commiss
3818 Tawzer	7/1/15	3/31/16	$4,176.00
325 Marjac	9/4/15	10/6/15	$1,896.09
6027 Glen-eagles Dr.	9/4/15	10/5/15	$4,917.00
2303 Roy Dr.	8/1/15	10/23/15	$2,872.10
311 E. 65th N. Clement	8/5/15	9/30/15	$13,500.00
311 E. 65th N. Clement	8/5/15	9/30/15	$11,940.50
Lot 6 Block 1 Journeys End	9/1/15	9/16/15	$561.00
2995 Janessa	8/10/15	9/11/15	$1,293.60
3571 Daleen St	8/20/15	9/28/15	$3,087.00
Unit 4 G Grizzly Way	9/1/15	10/7/15	$742.00
1627 Clarence Roberts	9/1/15	9/22/15	$2,073.50
11245 Greenbrier	9/1/15	10/1/15	$2,291.63
3892 Steeplechase Lane	9/6/15	10/8/15	$3,135.00
Total			$52,485.92[8]

Exs. 113; 201-223

Trustee contends that the commissions were earned by Debtors prior to the filing of the bankruptcy petition, and therefore are property of their estate under §541(a)(1), (a)(6) and subject to turnover. Debtors disagree, arguing that the commissions were paid to Bastille, and not to Debtors personally, and therefore are not part of their bankruptcy estate. Debtors pose an alternative argument, contending that in the event the Court determines the commissions are part of their bankruptcy estate, then the Court should find that a portion of the work to earn the commission was

property. Note, also, no cap fees were deducted from the commissions at issue as Debtors' annual cap obligation had been satisfied before these deals closed.

[8] Debtors were involved in other deals "in process" at the time the bankruptcy petition was filed, but which ultimately failed to close, so no commissions were paid. Ex.112

performed postpetition, apportion the commission accordingly, and order turnover of only that portion earned prepetition.

II.

The Bankruptcy Code provides that the bankruptcy estate created by the filing of a petition includes "all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1). This estate also includes all "[p]roceeds, products, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." §541(a)(6).

Regarding real estate commissions earned by debtor-agents, courts have held that "[w]here the debtor receives a commission post-petition, but essentially fulfilled all of his obligations for that commission prepetition, the commission will be deemed property of the estate." *Tully v. Taxel (In re Tully)*, 202 B.R. 481, 483 (9th Cir. BAP 1996). Put another way, "a debtor's commission is property of the estate 'if all the acts of the debtor necessary to earn it are rooted in the pre-bankruptcy past.'" *Id.* (quoting *In re Sloan*, 32 B.R. 607, 611 (Bankr. E.D.N.Y. 1983)) (citing *Segal v. Rochelle*, 382 U.S. 375, 380 (1966)). However in the event the debtor's services required to earn the fees were performed both before and after the bankruptcy filing, the estate is entitled to recover the portion of the payment attributed to prepetition services, even though the payment is not made until after the bankruptcy filing. *Jess v. Carey (In re Jess)*, 169 F.3d 1204, 1207 (9th Cir. 1999) (discussing trustee's entitlement to debtor attorney's contingent fees for case settled after bankruptcy). The BAP, in *In re Jess*, held that:

> [t]he proper analysis...is to first determine whether any postpetition services are necessary to obtaining the payments at issue. If not, the payments are entirely "rooted in the prebankruptcy past" and the payments will be included in the estate. If some postpetition services are necessary, then courts must determine the extent to which the payments are attributable to the postpetition services and the extent to which the payments are attributable to prepetition services. That portion of the payments

> allocable to postpetition services will not be property of the estate. That portion of the payments allocable to prepetition services or property will be property of the estate.

In re Jess, 215 B.R. 618, 620 (quoting *In re Wu*, 173 B.R. 411, 414-15 (9th Cir. BAP 1994)).

The question of when a realtor has earned a commission is answered by state law. *In re Tully*, 202 B.R. at 483-84. Prior to 1993, in order for a real estate broker to earn a commission in Idaho, the only requirement was that he or she procure a buyer who was ready, willing and able to purchase on terms acceptable to the seller. *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 177 P.3d 955, 959-60 (Idaho 2008). However, in that year, the Idaho Supreme Court adopted the rule from *Ellsworth Dobbs, Inc. v. Johnson*, 236 A.2d 843 (N.J. 1967). Thereafter, to earn a commission, in addition to procuring a ready, willing, and able buyer, the buyer must actually enter into a binding contract with the seller, and the buyer must complete the transaction by closing the deal in accordance with the contract terms. *Margaret H. Wayne Trust v. Lipsky*, 123 Idaho 253, 259-60 (Idaho 1993). This difference is standards is potentially significant in a bankruptcy case, where the timing of events can be critical, because while the real estate broker must produce the ready, willing, and able purchaser, both of the additional elements to qualify for a commission must be performed by the purchaser.

III.

In this case, Trustee is entitled to the commissions, as "all the acts of the debtor necessary to earn it are rooted in the pre-bankruptcy past." *In re Tully*, 202 B.R. at 43; *see also In re L.D. Patella Constr. Corp.*, 114 B.R. 53, 55-56 (Bankr. D. N.J. 1990) (applying *Ellsworth Dobbs*, the bankruptcy court held that "[s]ince the contract between the debtor and [the buyers] was signed before the debtor's bankruptcy petition was filed, the debtor's argument that no postpetition services are required of [the realtor] is correct.")

In *Tully*, as in this case, the real estate broker arranged a sale of property prior to filing his

bankruptcy petition, but his commission was not paid until the sale closed, which occurred after bankruptcy. Like Debtors contend here, the real estate broker argued that because he performed significant postpetition services (such as arranging financing for the purchaser), and earning the commission was dependent on those postpetition services, the commission, when paid, was not property of the bankruptcy estate. The BAP rejected this argument, reasoning that "[a]t the time of his petition, there was nothing left for [the debtor] to do." *Tully*, 202 B.R. at 484. While the Panel recognized that the broker performed some postpetition services, it realized on the bankruptcy court's factual findings that those services were not essential for the broker to be compensated, but were, instead, a courtesy to the buyer to facilitate consummation of the deal. *Id.*

Employing the same reasoning in this case yields the proper resolution of the Motion. For those deals which were "in process" when Debtors filed their petition, in which the parties had signed a purchase agreement, and which thereafter ultimately closed, Debtors had performed all the services necessary under the law to earning a commission. Accordingly, because Debtors' services which produced the commission were all "sufficiently rooted in the prebankruptcy past," their share of the commission constitutes property of the bankruptcy estate.

Moreover, under Idaho law, only a licensed real estate broker or salesperson is entitled to collect a real estate commission, Idaho Code § 54-2054. Thus, as the licensed agents, the commissions in this case belonged to Debtors, not to their corporation. That Debtors had entered into a contract with Keller to have their commissions paid to Bastille, a corporation they created after their bankruptcy filing, does not alter the result. Under § 542(a), a debtor must turn over possession, *or account to the trustee*, for any property of the estate. Debtors' creation of a corporation after filing for bankruptcy to receive their share of commissions cannot be used to deflect their obligation to account to Trustee for commissions

constituting property of the estate in this case. *See Newman v. Schwartzer (In re Newman)*, 487 B.R. 193, 200 (9th Cir. BAP 2013) (in a case involving tax refunds, holding that, since they were property of the estate, that debtor no longer had possession of the funds when the turnover motion was made, did not relieve her of the statutory obligation under § 542(a) to account for the refunds to the trustee).

Debtors attempt to distinguish the cases discussed above by reasoning that the real estate agents in those cases were individuals, unaffiliated with a real estate agency with a right to share in the commissions. But this distinction makes no difference. Commission-splitting is common; the Idaho Code specifically provides for it. Idaho Code § 54-2054(2)[9] Moreover, the case cited did not turn on the fact that the debtor-agents therein were not affiliated with a real estate agency.[10] "Real Estate purchase and Sale Agreement" Forms utilized by Debtors list Keller as the "selling agency" and Debtors as the "selling agent". See Exs. 200, 202, 204, 206, 208, 210, 212, 214, 216, 218, and 220. And, as noted above, pursuant to Idaho Code § 54-2054, only a licensed real estate broker or salesperson is entitled to collect a real estate commission.

Having proven that the commissions are part of the bankruptcy estate, Debtors attempt to limit their liability to Trustee by arguing that the commission ought to be apportioned to reflect their pre- and post- bankruptcy efforts. *See* § 541(a)(6). However, while, depending upon the facts, the case law may

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[9] Idaho Code § 54-2054(2) provides:

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the State of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. *This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to an unlicensed legal business entity, if:*

(a) All of the entity's shareholders, members or other persons having a similar ownership interest are active real estate licensees; and

(b) An owner licensed under the broker performed the licensed activities for which the payment is made. (emphasis added).

[10] Indeed, in *In re Tully*, the debtor was a licensed realtor affiliated with an agency, 202 B.R. at 482.

permit such apportioning, Debtors have given the Court absolutely no evidence which would allow it to make such a determination, beyond Melanie Anderson's testimony that some of the subject transactions required more work than others to get closed. Therefore, Debtors arbitrary suggestion in their briefing that the commissions be split 90% 10% is not supported by the evidence. To benefit from a share of the commissions, as the case law discusses, Debtors must identify and quantify the services they performed postpetition that were necessary to earn the commission for each discrete transaction. Having offered no such proof, the Court declines to speculate in their favor.

Conclusion

The commissions are property of the bankruptcy estate under § 541(a)(1). Debtors have not shown they should be excluded from the estate under the "personal services" exception in § 541(a)(6). Under § 542(a), Debtors are duty-bound to account to Trustee for the commissions. The Motion will be granted and Debtors will be required to turn ove $52,485.92 to Trustee.

A separate order will be entered.

Dated: September 16, 2016

/s/ Jim D. Pappas

United States Bankruptcy Judge

(SEAL)
UNITED STATES COURTS DISTRICT OF IDAHO

Honorable Jim D. Pappas

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re: Stephen J. Anderson and Melanie Anderson, Debtors.	Bankruptcy Cas No. 15-40878-JDP

ORDER GRANTING TRUSTEE'S MOTION FOR TURNOVER

For the reasons set forth in the Court's Memorandum of Decision filed heriein, and for other good cause,

IT IS HEREBY ORDERED THAT Trusee's Motion for Turnover, Dkt. No. 43, shall be and is hereby **GRANTED**. Debtors Stephen and Melanie Anderson are hereby **ORDERED** to turn over the real estate commissions totaling $52,485.92 to Trustee Gary Rainsdon.

Dated: September 16, 2016

/s/ Jim D. Pappas

United States Bankruptcy Judge

(SEAL)
UNITED STATES COURTS DISTRICT OF IDAHO

Honorable Jim D. Pappas