

**Distribution of Funds on Hand When A Case is Dismissed:  
Changes in Procedure in the Eastern District of Kentucky  
After *Harris v. Viegelahn*<sup>1</sup>**

Beverly M. Burden  
Chapter 13 Trustee, EDKY  
July 27, 2015

Summary:

If a case is **dismissed before confirmation** of a plan, this trustee will continue to follow existing practice. Counsel for the debtor will have 14 days after dismissal in which to file a fee application pursuant to KYEB-LBR 2016-2(f). The trustee will pay any allowed fee to the extent funds are available after payment of pre-confirmation adequate protection payments prior to returning any remaining funds to the debtor, as authorized by 11 U.S.C. § 1326(a)(2).

The trustee is adopting a new policy regarding funds in a case that is **dismissed after confirmation** of a plan. In those cases, the trustee will refund the money to the debtor as required by 11 U.S.C. § 349(b)(3), unless the court, for cause, orders otherwise. Counsel for the debtor and/or any creditor seeking payment from funds held by the trustee will need to file a motion and ask the court to order that the funds be paid to the requesting party.<sup>2</sup>

Explanation:

Although *Harris v. Viegelahn*, 135 S.Ct. 1829 (2015)<sup>3</sup>, dealt with cases converted from chapter 13 to chapter 7, in its analysis, the Court held that confirmation of a plan does not give creditors a vested interest in funds held by the trustee. “[N]o provision in the Bankruptcy Code classifies any property, including post-petition wages, as belonging to creditors.” *Harris*, 135 S.Ct. at 1839 (citation omitted). The same analysis would seem to apply in a dismissed case.

Section 349 governs the effect of dismissal and provides in part as follows:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title –

...

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 349(b)(3).

---

<sup>1</sup> **This message generally reflects my interpretation today of the case and statutes discussed herein, is subject to change without notice, and may not be relied upon in any legal proceeding or administrative matter.**

<sup>2</sup> In all cases, the trustee will continue to refund to the debtor any monies received on or after the date of dismissal.

<sup>3</sup> See my previous article at: [http://www.ch13edky.com/linked/conversion\\_-\\_no\\_disbursements\\_to\\_debtors\\_attorneys\\_or\\_to\\_creditors\\_when\\_case\\_converts\\_from\\_13\\_to\\_7\\_-\\_harris\\_v.\\_viegelahn.pdf](http://www.ch13edky.com/linked/conversion_-_no_disbursements_to_debtors_attorneys_or_to_creditors_when_case_converts_from_13_to_7_-_harris_v._viegelahn.pdf) for more information.

A debtor's postpetition wages are property of the estate in the chapter 13 case pursuant to 11 U.S.C. § 1306. Post-petition wages which the trustee has not yet disbursed<sup>4</sup> generally would revest back in the debtor at dismissal. Section 349 notwithstanding, section 1326(a)(2) still provides that if a plan is not confirmed, the trustee shall return to the debtor funds not owed to a creditor for adequate protection or to a party holding an administrative claim under § 503(b). Therefore, this trustee will continue to follow KYEB-LBR 2016-2(f) and 11 U.S.C. § 1326(a)(2) if a case is dismissed before confirmation.

However, in light of the Supreme Court's holding in *Harris* that confirmation of a plan does not give creditors a vested right to funds held by the trustee, this trustee will now return any funds held as of the date of dismissal back to the debtor, unless the court, for cause, orders otherwise as provided in 11 U.S.C. § 349. It will be up to the parties seeking payment to ask the court to order otherwise.

Because of this change in policy, this trustee will file a Notice of Proposed Distribution of Funds and give notice to counsel for the debtor and any creditor being paid adequate protection concurrently with counsel for the debtor of the need for filing such a motion. The trustee has set a 14-day deadline for taking action. A copy of the Notice is attached. The trustee will not send notices to any party if the amount on hand is \$20 or less.

If the facts of a particular case warrant, the trustee might also give notice to other creditors or parties in interest. For example, a secured creditor whose lien attaches to proceeds of its collateral would likely have cause to seek payment from insurance proceeds held by the trustee, and the trustee will make every effort to monitor cases in which funds on hand were derived from a source other than a debtor's postpetition wages. However, all creditors must be vigilant and be prepared to protect their interests and assert their rights regardless of whether the trustee gives them notice.

---

<sup>4</sup> Some examples of reasons why this trustee is holding funds that have not yet been disbursed to creditors are:

- Personal checks received after the 15th of the month are held by this trustee until the next month because of the risk of NSF's;
- An objection to a claim is pending, and funds are held to pay this claim should the objection be overruled;
- A secured creditor has obtained relief from stay but the deadline for filing a deficiency claim has not passed;
- A claim is on "reserve" pending the filing of a transfer or because the funds are to be remitted to the court's registry at the end of the case;
- There are no secured or administrative claims to pay but the bar date has not passed so disbursements to unsecured creditors cannot begin;
- The trustee receives funds from an unknown source and places the funds on hold pending further investigation.

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
DIVISION**

**IN RE:**

**CASE NO.**

**DEBTOR(S)**

**NOTICE OF TRUSTEE'S PROPOSED REFUND TO DEBTOR OF  
FUNDS ON HAND AT DISMISSAL**

NOTICE

**If no objections are filed within 14 days of the filing of this Notice, the Trustee will, without further notice or hearing, send all funds on hand to the Debtor(s). Any party objecting to the Trustee's Notice must set the objection for hearing and give all parties at least 14 days' notice of the date and time for the hearing.**

The Chapter 13 Trustee hereby gives notice to counsel for the Debtor(s) and to any secured creditors receiving adequate protection payments pursuant to the confirmed plan that unless an objection is filed within 14 days, the Trustee will send funds on hand to the Debtor(s).

This case was dismissed on \_\_\_\_\_, after confirmation of a chapter 13 plan. The Trustee has on hand the sum of \$ \_\_\_\_\_ in payments made to the Trustee prior to dismissal ("Available Funds"). This amount does not include sums received from the Debtor(s) on or after the date of dismissal, which will be refunded to the Debtor(s).

Title 11 U.S.C. § 349(b)(3) provides:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title –

. . .

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 349(b)(3). The Trustee believes the Available Funds were derived from the Debtor(s)' postpetition wages or other property of the estate that would not have vested in any entity other than the Debtor(s) immediately before the commencement of the case. Therefore,

the Trustee must return the funds on hand to the Debtor(s) unless the Court, for cause, orders otherwise.

If any party has cause for seeking payment from the Available Funds, including but not limited to Counsel for the Debtor(s) seeking payment for attorney fees previously approved by the Court, said party must, within 14 days of this Notice, file an objection to the Trustee's Notice and set the objection for hearing before the Court, giving all parties at least 14 days' notice of the hearing.

If no objections to this Notice are timely filed, the Trustee will send funds on hand back to the Debtor(s).

Respectfully submitted -

/s/ Beverly M. Burden  
Beverly M. Burden  
BAR# 09330  
Chapter 13 Trustee  
P.O. Box 2204  
Lexington KY 40588  
(859) 233-1527  
NOTICES@CH13EDKY.COM

#### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the parties below by mail or electronically via ECF on \_\_\_\_\_, 2015.

/s/ Beverly M. Burden  
Beverly M. Burden  
BAR# 09330  
Chapter 13 Trustee  
NOTICES@CH13EDKY.COM

Counsel for Debtor(s) (via ECF)  
All Parties Receiving Electronic Notice (via ECF)  
Debtor(s) (by mail):  
Creditors (by mail):