

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

DAVID EUGENE DENNING,

Debtor.

Case No. DK 13-04630

Hon. Scott W. Dales

ORDER REGARDING MOTION TO COMPEL

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Victor Lotycz, purporting to be a custodian under 11 U.S.C. § 543, has filed a Motion to Compel Reimbursement of Costs and Fees Under 11 U.S.C. 543 and for Other Relief (the “Motion,” DN 13). The Motion recites that Mr. Lotycz is in possession of various assets that he seized pursuant to a pre-petition judgment evidently as an “officer” in the matter of *Cavalry Portfolio Services vs. David Denning*, Case No. 06-638-GC, pending in the Circuit Court for Hillsdale County, Michigan.

From the Motion, it appears that Mr. Lotycz has seized a variety of firearms with an approximate value of between \$1,900.00 and \$2,200.00. Against this value, Mr. Lotycz asserts a statutory fee in the amount of at least \$1,119.00 for costs and expenses he allegedly incurred or paid in connection with the seizure of the firearms. He also seeks storage costs. More specifically, in his prayer for relief, he requests:

an order from the court granting relief from stay and allowing sale of the assets or in the alternative providing for adequate protection in the amount of \$1,119.00 plus accruing storage fees to be paid at the time of turnover . . .

See Motion at p. 10.

In reviewing the docket in this matter, the court learned that on August 2, 2013, chapter 7 trustee Stephen L. Langeland (the “Trustee”) filed an electronic report of no distribution. In that report, the Trustee states as follows:

I, Stephen L. Langeland, having been appointed trustee of the estate of the above-named debtor(s), report that . . . that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee.

See Docket entry of August 2, 2013 in Case No. 13-04630. According to the Motion, the Trustee is aware of the firearms, but according to this docket entry he sees no need to administer them. Under these circumstances, including the report of no distribution and the custodian’s unopposed request to recover the statutory fees and storage costs, the court is not inclined to order Mr. Lotycz to turn over the firearms, or protect the entities with whom he may have dealt in connection with the seizure. Given the Trustee’s conclusion that the estate has been fully administered, there seems little point.

Instead, the court believes that cause exists to excuse compliance with the statutory obligations under subsections (a), (b), and (c) of § 543. The court finds that the interests of creditors would be better served by permitting Mr. Lotycz to continue in possession, custody and control of the firearms. *See* 11 U.S.C. § 543(d).

To the extent that Mr. Lotycz seeks authority to sell the property, such relief requires modification of the automatic stay, as the Motion itself suggests. *See* 11 U.S.C. §362(a); Motion at p. 10. Although the Motion sought such relief, Mr. Lotycz did not tender the filing fee. For

that reason, the court will deny the Motion. If Mr. Lotycz is unwilling to await the termination of the automatic stay that will likely occur by operation of law under § 362(c), he may file a motion under § 362(d) and tender the filing fee. If he does so, the court will consider the request to modify the stay at that time. *See* 11 U.S.C. § 362(d); *see also* LBR 9013(f) (combined motions prohibited).

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion is DENIED to the extent it seeks relief from the automatic stay, and compliance with subsection (a), (b), and (c) of § 543 is EXCUSED.

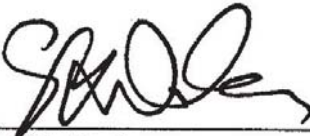
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order on Mr. Lotycz, Thomas J. Budzynski, Esq., Stephen L. Langeland, Esq., the United States Trustee, and all creditors appearing on the matrix filed in connection with this case.

END OF ORDER

IT IS SO ORDERED.

Dated September 12, 2013





Scott W. Dales
United States Bankruptcy Judge