

**Department of Justice
Executive Office for United States Trustees**

**Final Agency Action
Case No. 06-0001**

**Review of the Decision of the
United States Trustee for Region []
Regarding []**

[] a chapter 7 panel trustee for the Eastern District of [] (“trustee”), seeks review of a decision by the United States Trustee for Region [] suspending the trustee’s eligibility to receive new case assignments until he demonstrates that he has taken action, satisfactory to the United States Trustee, to correct deficiencies identified in the United States Trustee’s Report of Field Examination (“UST Field Exam Report”). Based upon the record before me, I affirm the United States Trustee’s decision.

I. Course of this Proceeding

By Notice of Suspension (“Notice”) dated November 30, 2006, the United States Trustee for Region [] suspended the trustee from the active chapter 7 case rotation until he demonstrated that he had taken actions, satisfactory to the United States Trustee, to correct deficiencies identified in the UST Field Exam Report. Further, the trustee was notified that reinstatement required the approval of the Deputy Director of the Executive Office for United States Trustees. Notice at 1. *See also* 28 C.F.R. § 58.6 (Department of Justice procedures governing administrative review). On December 20, 2006, the trustee filed a request for review with the Director of the Executive Office for United States Trustees (“Request for Review”) and, thereafter, the United States Trustee filed a response to the Request for Review.

II. Standard of Review

In conducting this review, the Director must consider two factors:

1. Did the United States Trustee's decision constitute an appropriate exercise of discretion; and
2. Was the United States Trustee's decision supported by the record?

See 28 C.F.R. § 58.6(I) (specifying the scope of the Director's review).

The Director may “adopt, modify or reject the United States Trustee’s decision to suspend or terminate the assignment of future cases to the trustee.” *Id.*

III. Analysis

A. Duties of the United States Trustee and Panel Trustee

United States Trustees supervise chapter 7 panel trustees, 28 U.S.C. § 586(a)(1), and appoint them to individual chapter 7 cases. 11 U.S.C. § 701. The United States Trustees “carefully monitor the performance of panel members . . . in order to determine whether they should be continued in or removed from panel membership.” H.R. Rep. No. 95-595, at 102 (1977). “The United States trustee is permitted to conduct his own investigation . . . to exercise effective supervision and make effective evaluation of the performance of the private trustees on the panel.” *Id.* at 110.

Panel trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy is filed. As fiduciaries, trustees are held to very high standards of conduct. *See generally Woods v. City National Bank & Trust Co.*, 312 U.S. 262, 278 (1941); *Mosser v. Darrow*, 341 U.S. 267 (1951). *See also Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928) (Cardozo, C.J.).

The goals of the United States Trustee Program include protecting the public interest by ensuring efficiency in the administration of cases and by protecting the integrity of the bankruptcy system. *See* United States Trustee Program’s Mission Statement.^{1/} In striving to fulfill these goals, United States Trustees are entitled to expect, and indeed should demand, that the trustees under their supervision perform their duties at the high standards that are required of fiduciaries. In furtherance of these goals, United States Trustees and their staffs should notify trustees at the earliest opportunity of any inadequacies in their performance so that any such deficiencies can be resolved promptly.

It is against these high standards that the United States Trustee’s decision to suspend the trustee from active chapter 7 case rotation must be assessed. The United States Trustee determined that the trustee’s conduct was deficient in two fundamental areas. I evaluate the record in light of each of these determinations and consider other factors.

^{1/} The United States Trustee Program’s Mission Statement provides as follows:

The United States Trustee Program acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases.

B. Grounds for the United States Trustee's Decision to Suspend the Trustee

The United States Trustee suspended the trustee as a result of receiving an inadequate rating in the UST Field Examination Report. Notice at 1. The field examination was conducted by Region [] personnel on October 10 and 11, 2006. In the UST Field Exam Report, several deficiencies were noted, though the two primary reasons for the inadequate rating were that the "trustee failed to expeditiously pursue and/or liquidate assets" and that the trustee's "determination and administration of cases [was] not timely." *Id.*^{2/}

C. Record Supports the United States Trustee's Decision to Suspend the Trustee

Among other duties, trustees are required to liquidate the property of an estate and to close a case as expeditiously as is compatible with the best interests of all the parties in interest. 11 U.S.C. § 704(a)(1). They are also "accountable for all property received," 11 U.S.C. § 704(a)(2), and must furnish reports and information about their administration of cases. 11 U.S.C. § 704(a)(7), (8). In carrying out their supervisory responsibilities, United States Trustees require trustees to document their administration of estate funds. The *Handbook for Chapter 7 Trustees* ("Handbook") explicitly declares that a "chapter 7 case should be administered to maximize and expedite dividends to creditors and facilitate a fresh start for the debtors entitled to a discharge." Handbook at 6-1. *See also* Handbook at 8-10 to 8-21, 8-24, and 8-26 to 8-28. Failure to do so constitutes grounds for suspension by the United States Trustee. In Appendix E of the Handbook, a non-exhaustive list of reasons for suspending a trustee are established, which includes the following:

- failure to perform duties in a timely and consistently satisfactory manner;
- failure to cooperate and to comply with orders, instructions, and policies of the court, the bankruptcy clerk, or the United States Trustee; and
- failure to file timely, accurate reports, including interim reports, final reports, and final accounts.

Handbook, Appendix E, Procedures for Suspension and Removal of Panel Trustees and Standing Trustees, p. E-1.

The trustee has struggled to expeditiously pursue assets and to timely administer cases. In past performance reviews, the trustee was admonished to improve in these areas. For instance, in the review ending May 31, 1999, the trustee was instructed to "take immediate action to improve the timeliness and completeness of his responses to inquiries by the U.S. Trustee

^{2/} The UST Field Examination Report found other deficiencies that included a lack of appropriate segregation of duties and a lack of adequate security for case files. However, since the trustee's failure to expeditiously pursue and/or liquidate assets and his untimely administration of cases adequately support the United States Trustee's decision to suspend him, I do not need to address these deficiencies.

regarding the administration of no asset cases” and to “take steps to thoroughly document his files regarding investigation of assets.” UST Field Exam Report at 11.

The review ending May 31, 2001, assessed the trustee as “inadequate due to continued deficiencies in his ability to distinguish between asset and no-asset cases and his failure to timely file appropriate NDRs.” *Id.* at 11. Following this review, the United States Trustee met with the trustee to discuss these deficiencies, and the trustee agreed to provide a written management program describing the procedures implemented to manage his cases and to also provide reports tracking the age and status of no asset cases without NDR reports. *Id.* He also agreed to respond to any inquiries from the United States Trustee regarding cases that were open for over 60 days after the 341 meeting. *Id.*

For the following rating period, which ended May 31, 2002, the trustee submitted the required case management reports and promptly responded to all inquires from the United States Trustee regarding the trustee’s administration of cases. *Id.* However, he received a rating of “adequate, except for” because 15 cases were open for more than two years during the evaluation period. *Id.* The trustee improved his case administration and pursuit of assets during the subsequent rating period and received an adequate rating for the period ending May 31, 2003. *Id.* There were no cases open for more than a year and his NDRs were accurate and complete. *Id.* However, his performance slipped and he received an inadequate rating for the period ending May 31, 2005, due primarily to the fact that he had nine cases open for more than a year before an NDR was approved. *Id.* at 12. The trustee was again admonished to “continue to track the age and status of no-asset cases without NDRs to ensure timely and accurate decisions regarding the administration of assets.” *Id.* The record demonstrates that he has failed to do so.

It is apparent that the trustee’s failure to expeditiously pursue assets and to timely administer all cases is a chronic problem. In the UST Field Exam Report, the trustee is cited for deficiencies similar to those for which he has been admonished in the past. UST Field Exam Report at 3-10. In one instance, a case was reopened on March 4, 2004, at the request of the trustee to recover unclaimed funds, but the trustee did not file a claim with the State Controller’s office until January 10, 2005. UST Field Exam Report at 5. The trustee’s explanation that “he had no idea how difficult it was to deal with the State Controller’s office” does not explain why it took 10 months to file a claim. Trustee’s Response to UST Field Exam Report at 6. In addition, the trustee failed to retain copies of the claim and of his correspondence with the State Controller’s office, making it difficult to determine whether the claim was properly submitted. *Id.*

The trustee admits to delays in his administration of a case where he discovered a potentially fraudulent transfer but waited two months before contacting the debtor. Again, documentation of the reason for the delay was not maintained. UST Field Exam Report at 6. Similarly, in a case where the trustee learned from a creditor that the debtor owned a vehicle that was not disclosed on the debtor’s schedules, the trustee failed to administer this vehicle estimated to be worth \$5,000. *Id.* at 9. Instead, the trustee filed a No Distribution Report 816 days after the case was filed. *Id.* The trustee claims that the cost to tow, store, and auction the vehicle

outweighed the benefits of administering it. Trustee's Response to UST Field Exam Report at 11. While this may be true, the record does not reflect documentation by the trustee to demonstrate that he timely evaluated such costs, nor does it explain the reason it took the trustee more than two years to make this determination and to file a No Distribution Report. The trustee's statement that "with 20/20 hindsight as to how long the debtor would drag this out, I would not have pursued these assets" does not justify the untimely administration of this case. *Id.*

Untimely case administration also was apparent in a case in which the trustee successfully objected to the debtors' exemption of jet skis as vehicles.^{3/} UST Field Exam Report at 10. The court approved the trustee's motion to sell the jet skis to the debtor, but the trustee failed to collect the sales price, secure the property, or obtain title to the jet skis. *Id.* Instead, the trustee filed a No Distribution Report 786 days after the petition was filed. *Id.* The only explanation provided by the trustee is that the debtor lived in a "mountain community over one hour outside of [redacted] . . . the expense to pickup the items, store them and sell them would have proved economically disastrous." Trustee's Response to UST Field Exam Report at 12. This attempt to justify dilatory action is meritless; it does not explain why the trustee took more than two years to make such a determination.

The UST Field Exam Report's findings provide sufficient grounds for affirming the United States Trustee's suspension decision. At the time of the field examination, the trustee had taken more than one year after the petition was filed to close 29 no-asset cases, and the six no-asset cases that were selected for review were open from 585 to 816 days before the trustee filed Reports of No Distribution. UST Field Exam Report at 9-11. In the Request for Review, the trustee admits that he was deficient in many of the cases cited in the UST Field Exam Report stating, "I take full responsibility for not quickly closing cases, particularly small marginal cases." Request for Review at 1. While the trustee's candor certainly is appreciated, it does not obviate the trustee's failure to perform at an acceptable level. The trustee has demonstrated a consistent pattern in failing to expeditiously pursue assets and/or timely administer cases, as well as an inability to sustain corrective action.

The trustee asserts in his defense that the national statistics on trustees indicate that other trustees also struggle to expeditiously pursue assets and/or to timely administer cases. Request for Review at 2. The existence of deficiencies in other trustees is not a sufficient defense to the deficiencies noted in the UST Field Exam Report. The performance of other trustees is irrelevant to a determination of whether the trustee in the instant matter has expeditiously pursued assets and timely administered cases assigned to him.

^{3/} The UST Field Exam Report states the trustee objected to the exemption of two jet skis. The trustee notes that his objection covered three jet skis, two jet ski trailers, and one travel trailer. This discrepancy is irrelevant to the conclusion that the trustee failed to timely administer these assets.

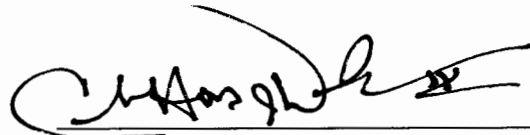
IV. Conclusion

Based upon the record before me, I conclude that ample evidence exists to affirm the United States Trustee's decision to suspend the trustee as an appropriate exercise of the United States Trustee's discretion. The trustee is suspended until he takes corrective action, satisfactory to the United States Trustee, to resolve the noted deficiencies. Further, reinstatement requires the approval of the Deputy Director of the Executive Office for United States Trustees.

The United States Trustee's corrective action is directed to remediate and prevent the deficiencies that led to the trustee's suspension. It should produce the desired result of improved administrative performance by the trustee. I encourage the trustee to use the suspension period to reestablish his credibility with the United States Trustee and to demonstrate his commitment to substantially improving his practices and procedures.

The foregoing conclusions and decisions constitute final agency action in this matter.

Dated: 3/1/07



Clifford J. White III

Director

Executive Office for United States Trustees