

Department of Justice
Executive Office for United States Trustees

Final Agency Action
Case No. 98-0002

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

[REDACTED], a member of the chapter 7 panel for the United States Bankruptcy Court for the District of [REDACTED],¹ seeks review of a decision by the United States Trustee for Region [REDACTED] to suspend her receipt of new case assignments while she works to improve the performance of her trustee duties and the administration of her existing caseload.² Based upon the record before me, I affirm the United States Trustee's decision.³

I. Course of this Proceeding

The trustee has been a member of the panel of chapter 7 trustees for the United States Bankruptcy Court for the District of [REDACTED] since July 15, 1996. Due to perceived inadequacies in her administration of cases, the trustee was notified on March 25, 1998 that new

¹ Hereinafter, for ease of reference, "the trustee."

² United States Trustees are Justice Department officials appointed by, and who serve at the pleasure of, the Attorney General. 28 U.S.C. 581(a) and (c). The Director of the Executive Office for United States Trustees is a Justice Department official who acts under authority delegated by the Attorney General. Panel trustees, such as this trustee, generally serve under appointments that have a term not to exceed one year.

³ The record in this matter includes the United States Trustee's decision; the trustee's request for review; the United States Trustee's response; correspondence submitted by the trustee to the Director; and documents that accompanied those various submissions. In addition, I obtained a copy of the trustee's appointment papers from the Office of Review and Oversight of the Executive Office for United States Trustees.

case assignments would be suspended (the “Notice”).⁴ By letter dated April 8, 1998, the trustee filed a timely request for review with the Director of the Executive Office for United States Trustees (the “Request for Review”). The Request for Review was brief and contained no supporting materials. For this reason, the Office of the Director wrote the trustee on April 15, 1998 to inform her of the requirements of 28 C.F.R. 58.6(i) and gave her until April 23, 1998 to augment her submission if she chose to do so.⁵ By letter dated April 22, 1998, the trustee wrote the Office of the Director stating that she had no additional materials in her possession that supported her request for review. On May 4, 1998, the United States Trustee filed her response to the Request for Review (the “Response”).

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).

III. Analysis

United States Trustees supervise panel trustees. 28 U.S.C. 586(a)(1). They 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, 95th Cong., 1st Sess. at 102 (1977). Under the law, “[t]he United States trustee is permitted to conduct his own investigation . . . to exercise effective supervision and make an effective evaluation of the performance of the private trustees on the panel.” Id. at 110.

The United States Trustee suspended the trustee for failing to (1) perform duties in a timely and consistently satisfactory manner; (2) comply with the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court; (3) cooperate and comply with orders, instructions and policies of the court, the bankruptcy clerk and United States Trustee; and

⁴ The United States Trustee did not issue an Interim Directive. See 28 C.F.R. 58.6(d) (setting forth the bases for an Interim Directive). Accordingly, the trustee has continued to receive new case assignments while this review has been conducted. See 28 C.F.R. 58.6(c) (providing that a trustee shall continue to receive new case assignments during the review period unless the United States Trustee issues an Interim Directive).

⁵ As a result of the extra time given to the trustee, the United States Trustee’s response to the Request for Review became due on May 8, 1998.

(4) perform her general duties and case management comparably to that of other members of the chapter 7 panel. See Notice (and documents attached thereto); and Response at 2. The United States Trustee concluded the trustee should be suspended from receiving new cases while she worked to improve her performance in these areas. Notice; Response at 1.

Trustees are fiduciaries with wide-ranging responsibilities to effectuate the goals of the particular chapter under which a bankruptcy case is filed. Because they are fiduciaries, trustees are held to very high standards of honesty and loyalty. 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 record in this case reveals that the trustee has experienced significant problems in administering her cases. One consistent problem has been her inability to file timely and appropriate pleadings on behalf of the estates that she has been assigned to protect. The following examples are illustrative.

On October 8, 1997, the trustee filed a motion in the Ramon M. bankruptcy case, [REDACTED], which she captioned “Amendment to Trustee’s Objections to Disallow a Claim.” By Order dated October 20, 1997, the bankruptcy court denied the motion for several reasons. The court held “[t]here is no pleading in the Court’s file which the Amendment appears to alter.” The court also found the amendment to be “unintelligible,” and could not ascertain from it what type of relief, if any, the trustee was seeking. This forced the court to advise the trustee on an elementary point of procedure, noting that “[i]f what the Trustee seeks to do is not object [to a claim], that is all she must do – **NOT OBJECT**. If she seeks other relief, that is not discernable from the pleading filed (emphasis in the original).”

The trustee has filed other deficient pleadings. On October 27, 1997, for example, the trustee filed an “Order Motion to reopen chapter 7 case” in the Lee R. bankruptcy case, [REDACTED]. The Chief Judge ruled that the motion was “unintelligible” and instructed the trustee to “read your motion and figure out a proper order.” On October 27, the court’s Courtroom Deputy returned the motion to the trustee with instructions to file a motion that complied with applicable requirements. The trustee refiled her motion on November 5, but it contained spelling errors, which the court had to correct. The trustee made the same errors in a similar motion she filed on November 4, 1997 in the Cathy R. bankruptcy case, [REDACTED]. The court also had to correct those errors.

In the Shelley W. bankruptcy case, [REDACTED], the trustee filed a motion to dismiss the debtor’s bankruptcy case for twice failing to appear at the initial meeting of creditors required by section 341 of the Bankruptcy Code. The trustee’s motion was deficient and unintelligible. In her prayer for relief, for example, the trustee asked the “Court [to] enter an [sic] Motion to Dismiss this case.” The motion’s various deficiencies caused the court to issue an order dated September 5, 1997 denying the motion for failing to comply with the Federal Rules of Bankruptcy Procedure and the district’s local rules. The order instructed the trustee to make an appropriate

filing within ten days or risk having the motion denied. The trustee failed to file a renewed motion. The court, after noting the trustee's failure to timely file a competent motion, denied the motion to dismiss the case by order dated September 23, 1997.

After the trustee realized her mistake in the Shelley W. bankruptcy case, she filed a revised motion to dismiss the case. In the interim, however, the court had issued an order discharging the debtor. For this reason, the court issued an order on October 8 denying the trustee's belated motion to dismiss. The trustee's careless practices thus prevented the trustee from pressing her contention that the debtor's conduct warranted the dismissal of his bankruptcy case.

Several months later, the trustee experienced a similar problem in the Robert D. bankruptcy case, [REDACTED]. In that case, she also filed a motion seeking to dismiss the debtor's case for failing to appear at a section 341 meeting of creditors. The district's local procedures obliged the trustee to notify the court whether her motion was contested so the court could thereafter act upon it. She failed to do so. Consequently, on January 26, 1998, the court issued an "Order to Show Cause to [the trustee] as to Why Sanctions Ought not be imposed." The order noted that "in other cases . . . under precisely the same facts, the Trustee has been advised by the Clerk's Office of the importance of timely prosecuting such motions."

On January 29, 1998, the trustee filed a response in which she attempted to justify her failure to comply with applicable procedures. She claimed she had not done so because she had to hold trustee sales in a number of cases; had to file reports in other cases with the court and with state taxing authorities; had to file a 180 day report with the United States Trustee; was in solo practice and, "compared with the other priority cases and duties due this Trustee needing my legal attention, the Robert D. dismissal did not appear to be a priority."

This was not a satisfactory response. In the Robert D. case, the trustee concluded that the debtor's case should be dismissed because the debtor failed to appear at the meeting of creditors. That meeting is important. At it, the United States Trustee -- or the trustee acting as her designee, and all creditors, have the right to question the debtor about his financial affairs. 11 U.S.C. 341; Fed. R. Bankr. P. 2003. Dismissal can be an appropriate sanction for failing to submit to an examination. *The Handbook for Chapter 7 trustees*, which is provided to every trustee, expressly provides that it may be appropriate for a trustee to seek dismissal of a debtor's case if the debtor does not appear for examination. *Handbook* at 28. In this case, the trustee failed to pursue dismissal simply because she was too busy to correct her own procedural mistakes. That is not acceptable conduct.

The record reflects that the trustee has other performance problems. She has filed erroneous reports of no distribution. Notice at Attachment 1 (March 20, 1998 memorandum from the Senior Bankruptcy Analyst to the United States Trustee); and Response at 5-6. She has failed to provide notice of asset sales to appropriate parties. Notice at Attachment 1; Response at 2-5. She has failed to administer her cases in timely fashion and has failed to file trustee's final reports with the court in timely fashion. 11 U.S.C. 704(9) (requiring trustee to file final reports);

Notice at Attachment 1; Response at 6. She also has unreasonably delayed the deposit of estate funds in a number of bankruptcy cases. Notice at Attachment 1; Response at 4-5.

The United States Trustee's Notice and Response are supported by extensive documentation that establishes this trustee has failed to adequately discharge her trustee duties in these respects. The trustee's request for review disputes some, but by no means all, of the problems identified by the United States Trustee, but her principal contentions are that she has been singled out for sanction because she is Hispanic (Request for Review at 1-2, 4), and her poor performance arises from a failure by the United States Trustee to adequately train her (*id.* at 4). The record does not support those contentions.

There is no evidence before me that would, in any way, indicate that the trustee's ethnicity or race played any role in her suspension. This trustee was appointed in 1996 with four other trustees. Response at 10. The United States Trustee considers this to be the trustee's "peer group." *Id.* The trustee contends she has not "been treated the same as the other new Trustee's [sic] hired" in 1996. Request for Review at 1-2. Specifically, the trustee asks that her caseload be compared with other trustees to determine whether she has been receiving a comparable number of cases. Request for Review at 4. The United States Trustee notes, in her response, that cases are assigned to trustees on a blind rotation system and not through any sort of direct assignment by the United States Trustee (Response at 9), and submits data establishing this trustee has received more total cases than the four other trustees hired during the same period. *Id.* The data also reveals that the trustee has administered roughly the same number of asset cases as the other trustees. *Id.* This record simply provides no support for the conclusion that this trustee has suffered any form of discrimination. To the contrary, the United States Trustee has carefully documented a variety of serious performance deficiencies.

Nor can I accept the trustee's position that her performance failures should be excused because she did not receive adequate training. Regardless of the cause, it is appropriate to suspend trustees who cannot do their job. Trustees exist not for their own benefit but to collect, protect, account for, and distribute these revenues to creditors in accordance with the payment provisions set forth in the Bankruptcy Code. 11 U.S.C. 704; 62 Fed. Reg. 51740, 51741 (Oct. 2, 1997). Given the large amounts of money they control and the many duties they perform, trustees who cannot manage their estates properly diminish the integrity of the bankruptcy system and jeopardize the interests of debtors and creditors. *Id.* For this reason, it is crucial that trustees be supervised; if necessary, those who cannot fulfill their duties must stop receiving new cases. *Id.*

Thus, even if the United States Trustee had given this trustee little or no training, it would still be appropriate to suspend her if she were failing to perform her trustee duties. In this case, however, the record establishes that the office of the United States Trustee devoted considerable time and effort to training this trustee. At the time of her appointment, the trustee, along with other recently appointed trustees, received three full days of formal instruction. Response at 7. That training was conducted at the office of the United States Trustee. Response at Attachment I. Speakers included United States Trustee Program personnel, officials of the Bankruptcy Court,

and other chapter 7 panel trustees. Id. During the trustee's tenure, the office of the United States Trustee has conducted at least seven additional training seminars specifically for trustees. Id. at 7 and Attachments J and W. On two occasions the office of the United States Trustee provided on-site assistance to the trustee. Id. at 7-8 and Exhibit L. Indeed, the trustee admits that at least some of that "technical assistance" was "great." Request for Review at 2. Moreover, the office regularly communicated with the trustee about the performance of her trustee duties through written correspondence.⁶ Id. at 7.

IV. Conclusion

The decision to suspend this trustee was an appropriate exercise of the United States Trustee's discretion and is supported by the record. The trustee has experienced a broad array of performance problems including deficient and untimely pleadings, erroneous distribution reports, failing to provide notice of asset sales to appropriate parties, failing to administer her cases in timely fashion, failing to file trustee's final reports in timely fashion, and delaying her deposit of estate funds. This trustee clearly needs an opportunity to devote more time to dealing with her pending cases and working to resolve her performance deficiencies. A suspension from new case assignments will give her that opportunity.

Accordingly, based upon my review of the record, including the written submissions of the United States Trustee and the trustee, I affirm the United States Trustee's decision to suspend the trustee's eligibility for assignment to chapter 7 cases while the trustee attempts to improve her performance.

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

Dated: May 28, 1998

Joseph Patchan
Director
Executive Office for
United States Trustees

⁶ The record also reveals that the office's attempt to assist the trustee is ongoing. At the time the United States Trustee notified the trustee that she was being suspended, the trustee was asked to contact the Assistant United States Trustee in [REDACTED] "to set a date for a staff member to come to your offices for a field review." Notice at 1.