

**Steve Leimberg's Asset Protection Planning Email Newsletter - Archive
Message #71**

Date: 06-Oct-05
From: Steve Leimberg's Asset Protection Planning Newsletter
Subject: FLASH - In Re: Kaplan

FLASH!

We've just heard news on the In Re: Kaplan case!

The Bankruptcy Trustee in the In Re: Kaplan case was represented by the law firm of **Ruden, McClosky** in Fort Lauderdale, FL.

Tom Messana (who argued the case) and LISI commentator **Jeff Baskies** (his partner) are preparing a more thorough summary and commentary which we'll send out to LISI members as soon as we've received it.

EXECUTIVE SUMMARY:

This afternoon (October 6, 2005), US Bankruptcy Judge Robert A. Mark in Florida (a state famous for its liberal homestead exemption) found that the "Homestead Cap" of \$125,000 as reflected in Section 522(p) of the Bankruptcy Code as amended by Section 322 of the Bankruptcy Abuse Prevention and Consumer Protection Act (referred to as "BAPCPA") applied to the equity the debtor acquired (by passive appreciation) in her home during the 1215 days prior to filing bankruptcy. In re: Kaplan, (US Bankr. so. dist. FL). This is the second opinion issued on the subject, and it squarely opposes a prior opinion from a bankruptcy court in Arizona.

FACTS:

Applying a literal reading of Section 322 of the BAPCPA, In re McNabb, 326 B.R. 785 (Bankr. D. Ariz. 2005), the court held that Section 322 of the BAPCPA (which modifies Section 522(p) of the Bankruptcy code, providing a cap on homestead value) did not apply in Arizona because Arizona opted out of the federal exemptions found in the Bankruptcy Code.

The debtor in the Florida case, Elona Kaplan, argued that the logic in McNabb similarly applied to her case as Florida also opted out of the federal exemptions.

However, Judge Mark found the McNabb decision to be wrong, when "the time-tested rules of statutory construction are applied with open eyes,". Judge Mark held for the trustee making the equity in

excess of \$125,000 available to the trustee and the creditors.

HOPE THIS HELPS YOU HELP OTHERS!

Tom Messana Jeff Baskies

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