

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

In re:)	
)	
BOA NUTRITION, INC.,)	Case No. 23-03665-5-PWM
)	
Debtor.)	Chapter 7
)	

**MOTION TO DETERMINE THAT THE CHAPTER 7 TRUSTEE HAS NO
DUTY TO REPORT THE DEBTOR’S BENEFICIAL OWNERSHIP
INFORMATION TO THE U.S. DEPARTMENT OF THE TREASURY**

The U.S. Bankruptcy Administrator (the “BA”), under 11 U.S.C. §§ 105 and 704, 31 U.S.C. § 5336, and 31 C.F.R. § 1010.380, moves the Court for an order determining that the chapter 7 trustee has no duty or obligation to report beneficial ownership information on the debtor’s behalf under the Corporate Transparency Act. In support of this request, the BA states as follows:

SUMMARY

New reporting obligations under the Corporate Transparency Act require most corporations, limited liability companies, and similar entities to report information about their beneficial owners, with the laudable goal of enhancing transparency to combat financial crimes. The U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) started accepting reports this year, and existing companies have a filing deadline of January 1, 2025. Most debtors in business chapter 7 cases will be subject to these reporting requirements, including the debtor in this case. The BA believes that bankruptcy trustees have no duty to file these

reports, since they are representatives of the bankruptcy estate created upon the filing of the case. A bankruptcy estate is not included within the definition of “reporting company” within the statute. 31 U.S.C. § 5336(a)(11). Additionally, a bankruptcy trustee is not expressly included within the definition of “beneficial owner.” 31 U.S.C. § 5336(a)(3). 11 U.S.C. § 704 does not create a duty for a bankruptcy trustee to file such reports on a debtor’s behalf.

The BA does not believe that bankruptcy trustees should be left to guess about the scope of their duties, especially here where noncompliance can come with civil and criminal penalties. Therefore, the BA requests an order determining that the trustee has no duty to report beneficial ownership information on the debtor’s behalf.

BACKGROUND

1. The Court has jurisdiction over this case under 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a), the United States District Court for the Eastern District of North Carolina has referred this case and this proceeding to this Court by virtue of the Order of Reference entered on August 3, 1984. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

2. The debtor filed a voluntary petition under chapter 7 on December 19, 2023. John C. Bircher, III is the chapter 7 trustee.

3. The debtor, BOA Nutrition, Inc., is a corporation whose principal place of business was in Raleigh, NC.

4. The public records available with the North Carolina Secretary of State reflect that the debtor was incorporated in 2020. The certificate of authority was

signed by Jon Linzen Pritchett in the capacity of President.

5. The sole annual report filed by the debtor with the Secretary of State was signed by Jon Linzen Pritchett as Chief Executive Officer.

6. The Q. 28 of the debtor's statement of financial affairs identifies Maurice Durschlag, Will Pleasants, Jason Meggs, Norm Bilow, Hein Pretorius, J. Kelley Williams, Jr., James Kitchen, and Merrill Mason as the debtor's officers, directors, managing members, general partners, members in control, controlling shareholders, or other people in control of the debtor at the time of the filing of this case.

7. The debtor's filings do not include passport numbers, driver's license numbers or other identifying numbers for its officers and shareholders. No images of these documents are included. Similarly, the birth dates of these individuals are not provided. Of course, one would not expect to find this identifying information in the debtor's bankruptcy filings, since the disclosure of this information is not required by the Bankruptcy Code or the prescribed forms.

ARGUMENT

Under the Corporate Transparency Act, any "reporting company" is required to submit information about its beneficial ownership to FinCEN. 31 U.S.C. § 5336(b)(1).¹ A reporting company is required to identify "each beneficial owner . . . and each applicant," by their legal name, birth date, address, and identifying number such as a passport number or driver's license. 31 U.S.C. § 5336(b)(2). An image of the identification document must also be submitted. 31 C.F.R. § 1010.380(b)(1)(ii)(E).

¹ FinCEN has published a "Small Entity Compliance Guide"
https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

“Reporting company” is defined to include “a corporation, limited liability company, or other similar entity that is . . . created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe.” 31 U.S.C. § 5336(a)(11). There are certain exceptions, which are inapplicable here.²

While the debtor in this case is a corporation and constitutes a reporting company under the statute – the bankruptcy estate is not the debtor. This distinction is the result of the Bankruptcy Code. Under § 541, the filing of a bankruptcy case “creates an estate.” 11 U.S.C. § 541. All the debtor’s property interests become property of the estate. In chapter 7, a trustee is appointed to administer the newly created estate. The trustee is “the representative of the estate.” 11 U.S.C. § 323(a).

Further, the bankruptcy trustee is not a “beneficial owner” of the debtor under the statute. A trustee does not become the debtor or the debtor’s agent. *See, e.g., In re Adelphi Hosp. Corp.*, 579 F.2d 726, 727 (2d Cir. 1978) (holding that a trustee was not subject to state recordkeeping regulations, because they applied to the debtor’s “governing authority” such as its officers and directors, and “[a] trustee in bankruptcy is neither a director nor a trustee of a corporation”); *In re Obie Elie Wrecking Co., Inc.*, 35 B.R. 114, 115 (Bankr. N.D. Ohio 1983) (finding that “the trustee is not the agent of the debtor” and “acts as representative of the estate”).

Where there is an obligation on the trustee to take an action that was the responsibility of the debtor, statute and regulation make that clear. For example,

² One exception, addressing inactive entities, only applies to inactive businesses, that, among other things, hold no assets and have not sent or received funds of greater than \$1,000 in the preceding year. Due to the limited nature of the exception, almost all debtors would be required to file.

with respect to the obligation to file tax returns, 26 U.S.C. § 6012(b)(3) requires:

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

This view is further supported by a review of a chapter 7 trustee's enumerated duties under 11 U.S.C. § 704(a). In some instances, the trustee has an obligation to perform a debtor's duties, such as continuing to perform a debtor's obligations as administrator of an employee benefit plan. *See* 11 U.S.C. § 704(a)(11). But none of the enumerated duties can be construed as requiring a chapter 7 trustee to file beneficial ownership reports to FinCEN on a debtor's behalf.

This is a new issue, and the BA believes there is currently no caselaw on the subject. However, based upon a plain reading of the statutory language, the debtor is the "reporting company" under the CTA, not the bankruptcy estate. Further, the owners of the debtor are the "beneficial owners" under the CTA, not the bankruptcy trustee. Additionally, there are strong policy reasons not to place this reporting obligation on chapter 7 trustees. It would require trustees to make factual inquiry as to whether each of the cases they are assigned is a "filing entity" under the CTA. The reporting requirement would not only cover prospective case assignments but may also include prior assignments, potentially even in closed cases where there were no assets administered. In addition to making the initial determination as to whether

the reporting requirements are applicable, trustees would then be required to conduct discovery to obtain the required information, on a subject that is entirely unrelated to the administration of the bankruptcy estate (in most instances where there is no possibility they will be fairly compensated for the work they would be required to perform). In the instant case, the trustee would need to obtain full legal names, birth dates, addresses, and identification documents for at least 8 individuals – one of whom is in the Netherlands.

THEREFORE, the BA requests that the Court enter an order:

1. Determining that the chapter 7 trustee has no duty to report beneficial ownership information to FinCEN on the debtor's behalf; and
2. Granting such other relief as the Court deems proper.

Respectfully submitted on February 28, 2024.

BRIAN C. BEHR
U.S. BANKRUPTCY ADMINISTRATOR

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CERTIFICATE OF SERVICE

This is to certify that, on this date, the foregoing document was served upon the following parties or counsel by automatic CM/ECF service or by depositing a copy in the United States mail, first class, postage prepaid, addressed as follows:

SERVED BY CM/ECF

John C. Bircher, III, Chapter 7 Trustee

John Northern, on behalf of the Debtor

SERVED BY US MAIL

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Dated: February 28, 2024

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