

**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

ARTURO GONZALEZ,

Debtor.

Case No. 2:15-bk-25283-RK

Chapter 7

**ORDER DENYING DEBTOR'S MOTIONS  
FOR RECONSIDERATION OF TURNOVER  
OF COMMISSION ORDER DUE TO NEW  
FACTS IN THE CASE (DOCKET NUMBERS  
320 AND 323)**

Date: October 2, 2018

Time: 2:30 p.m.

Place: Courtroom 1675

Roybal Federal Building

255 East Temple Street

Los Angeles, California 90012

Debtor Arturo Gonzalez ("Debtor") filed two motions called "Motion for Reconsideration of Turnover of Commission Order Due to New Facts in the Case" ("motions") (Docket Nos. 320 and 323). Debtor filed the first motion (Docket No. 320) on July 9, 2018 and the second motion (Docket No. 323) on July 11, 2018. The motions appear to be identical. The motions were heard before this court on October 2, 2018. Attorney Brett C. Curlee, of the Law Offices of Brett Curlee, appeared on behalf of the Chapter 7 Trustee, Wesley H. Avery ("Trustee"). Debtor appeared and represented

1 himself. Having reviewed the motions, and the opposition (Docket No. 337) filed by  
2 Trustee and Debtor's response to the opposition ("reply") (Docket No. 348), the court  
3 denies the motions based on the following reasons.

4 Federal Rule of Bankruptcy Procedure 9024 allows the court to grant relief from a  
5 judgment or final order. Debtor cites to Federal Rule of Bankruptcy Procedure 9024, as  
6 well as "Rule 60b(5)(6)" to support the motions for reconsideration. The court interprets  
7 this citation as Debtor's legal argument for reconsideration pursuant to Rule 60(b)(5)  
8 and Rule 60(b)(6) of the Federal Rules of Civil Procedure.

9 Debtor did not cite to the docket number or provide a copy of the exact order  
10 Debtor would like the court to reconsider. The caption of the motions and body of  
11 motions refer to reconsideration of the turnover of commission order. On February 19,  
12 2016, the court entered an Order on Motion by the Plaintiff and Chapter 7 Trustee for  
13 Turnover of Brokerage Commissions and For Preliminary Injunction Pending Disposition  
14 of Litigation ("turnover order") in Adversary Proceeding 2:16-ap-01037-RK, Adversary  
15 Docket No. 19. Trustee's opposition includes a copy of the turnover order. See  
16 Opposition of the Chapter 7 Trustee to the Motion for Reconsideration of Turnover of  
17 Commissions Order Due to New Facts (Docket Numbers 320 and 323), Exhibit D,  
18 Docket No. 337. Thus, the court infers that Debtor seeks reconsideration of the entry of  
19 this turnover order.

20 In the motions, the basic premise of Debtor's argument for reconsideration is that  
21 Trustee breached his fiduciary duty under 11 U.S.C. § 704(a)(5) to examine and object  
22 to proofs of claims. In Debtor's reply to the Chapter 7 Trustee's opposition, Debtor  
23 makes another new argument that because there was a pending motion to convert the  
24 case, the court should not have issued the turnover order. These arguments do not  
25 support valid grounds for reconsideration because the turnover order was legally  
26 correct.

27 The facts of this case to support the turnover order were that Debtor was in  
28 possession of his sales commission monies, which were his prepetition assets and thus,

1 property of the bankruptcy estate pursuant to 11 U.S.C. §541(a)(1), and Debtor has  
2 statutory obligations to cooperate with the Chapter 7 Trustee and surrender property of  
3 the bankruptcy estate to the Chapter 7 Trustee pursuant to 11 U.S.C. §521(a)(3) and  
4 (4). These facts have not changed.

5 The pendency of a motion to convert the case to Chapter 13 does not relieve the  
6 Chapter 7 Trustee's authority to administer assets of the bankruptcy estate pursuant to  
7 11 U.S.C. § 704. The case was and is in Chapter 7 subject to the administration of the  
8 Chapter 7 Trustee. Conversion of a Chapter 7 bankruptcy case under 11 U.S.C.  
9 §706(a) must be upon motion as required by Federal Rule of Bankruptcy Procedure  
10 1017(f)(2). In this case, Debtor's motion to convert this case to Chapter 13 was denied  
11 by order of this court, and thus, the case was never converted to Chapter 13 which  
12 would relieve the Chapter 7 Trustee's duties of administration in this case. Debtor cites  
13 no authority showing that the Chapter 7 Trustee's authority in a Chapter 7 bankruptcy  
14 case is suspended upon the mere filing of a motion to convert.

15 As to Debtor's allegations that the Chapter 7 Trustee breached his fiduciary  
16 duties in this case under 11 U.S.C. § 704, such allegations are not proven by the  
17 evidence attached to Debtor's motions, that is, notices of withdrawal of proofs of claim  
18 by creditors Discover Bank and Unify Credit Union. The reasons for the creditors'  
19 withdrawals of their proofs of claim are not shown by this evidence, and these  
20 documents by themselves are inadequate to show that the Chapter 7 Trustee breached  
21 any fiduciary duty to warrant reconsideration of the turnover order.

22 The Chapter 7 Trustee argues that Debtor's motions for reconsideration should  
23 be denied because they are not brought within a reasonable time under Federal Rule of  
24 Civil Procedure 60(b) since they are filed more than two years after the entry of the  
25 turnover order. The court does not agree with this argument because Rule 60(b) does  
26 not apply here because the turnover order is not a final order because it was entered in  
27 the adversary proceeding in which no final judgment adjudicating all claims has been  
28 entered as required by Federal Rule of Bankruptcy Procedure 7054 and Federal Rule of

1 Civil Procedure 54(b).


2 Still, Debtor must demonstrate valid reasons for the court to reconsider the  
3 turnover order, and his reasons lack sufficient legal basis and evidentiary support for the  
4 court for it to reconsider the turnover order. The Chapter 7 Trustee has authority to  
5 administer property of the bankruptcy estate, such as Debtor's prepetition sales  
6 commissions, which are property of the bankruptcy estate, and Debtor is required to  
7 surrender estate property to him. That was the basis for the turnover order, and that  
8 basis is still correct.

9 For the foregoing reasons, the court denies Debtor's motions for reconsideration  
10 of the court's turnover order.

11 IT IS SO ORDERED.

12 ###

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 Date: March 27, 2019

  
\_\_\_\_\_  
Robert Kwan  
United States Bankruptcy Judge