

PRESS RELEASE AND REQUEST FOR COVERAGE

February 22, 2012

Contact: Michelle Abdow

(413) 787.1133

**Shatz,
Schwartz and
Fentin, P.C.**

Counsellors at Law

**MASSACHUSETTS SUPREME JUDICIAL COURT OPINION FAVORS
TRUSTEE IN BANKRUPTCY CASE**

FOR IMMEDIATE RELEASE

SPRINGFIELD/NORTHAMPTON, MA – The highest court in the Commonwealth of Massachusetts, the Supreme Judicial Court (SJC), handed down an opinion in favor of the trustee in case SJC-10933, Roberta A. Boyle vs. Steven Weiss, trustee in bankruptcy.

The trustee, Steven Weiss, is Shareholder and Chair of the Bankruptcy Department of Shatz, Schwartz and Fentin, P.C., in Springfield and Northampton, MA. He was assisted by David K. Webber, an attorney at the same firm.

The debtor in this Chapter 7 bankruptcy case claimed a homestead exemption for real property held in trust. Although the debtor was a beneficiary holding 50% of the interests in the trust and occupied the property, she was neither a trustee nor the owner of the real estate. The Chapter 7 bankruptcy trustee asserted that the debtor's purported homestead declaration is ineffective.

The Bankruptcy Court reported the case to determine whether to sustain the bankruptcy trustee's objection. The Massachusetts Supreme Judicial Court held for the Trustee, finding that under the Massachusetts Homestead statute in effect at the time the bankruptcy case was filed, a trust beneficiary was not eligible to record a declaration of homestead (in 2010 the statute was amended to allow trust beneficiaries to claim homestead protection).

A U.S. Bankruptcy Court judge certified a question, asking, "May the holder of a beneficial interest in a trust which holds title to real estate and attendant dwelling in which such beneficiary resides acquire an estate of homestead in said land and building under G.L.c. 188, §1?"

The SJC answered the certified question in the negative under the 2004 version of the homestead statute. The debtor argued that a recent revision of the homestead statute served to clarify that under the 2004 act, a holder of a beneficial interest in real property may acquire a homestead estate in it.

But on February 16, 2012, the SJC disagreed.

“By its terms, the 2010 act expanded the definition of ‘owner’ to include two additional classes of persons: holders of life estates and holders of beneficial interests,” Justice Margot Botsford noted for a unanimous court. “The changes to the homestead statute reflected in the 2010 act offer no support for the debtor’s claim of entitlement to a homestead exemption under the 2004 act.”

The 12-page decision, *Boyle v. Weiss*, can be found in its entirety on www.ssfpc.com.

Steven Weiss concentrates his practice in the areas of commercial and consumer bankruptcy, reorganization and litigation. He supervises the firm’s bankruptcy, reorganization and workout practice, and represents creditors, debtors, and others in both commercial and consumer bankruptcy cases throughout Massachusetts. Weiss has been a member of the private panel of Chapter 7 Trustees for the District of Massachusetts since 1987, and also serves as a Chapter 11 Trustee.

David Webber practices in the areas of business transactions, estate and succession planning, taxation, and nonprofits.

About Shatz, Schwartz and Fentin, P.C.

Established in 1969, Shatz, Schwartz and Fentin, P.C. specializes in business law, estate planning, commercial and tax-exempt bond financing, real estate law, litigation and bankruptcy. The firm’s clients range from closely-held family enterprises to multinational companies with operations in western New England and eastern New York State. The thirteen attorneys at Shatz, Schwartz and Fentin provide efficient, cost-effective counseling and advocacy services which frequently involve innovative techniques at offices in Springfield, MA, Northampton, MA and Albany, NY. Additional information about Shatz, Schwartz and Fentin can be found on www.ssfpc.com.

###