

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

Elaine Shelly,

Debtors

MOTION TO VACATE  
ORDER OF DISMISSAL

BKY 00-42674

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TO: UNITED STATES TRUSTEE, CHAPTER 13 TRUSTEE, and other parties in interest.

1. Elaine Shelly, Debtor, moves the Court for the relief requested below and gives notice of hearing. The Court will hold a hearing on this motion at 9:30 a.m. on October 20, 2004, in Courtroom 8 West, United States Courthouse, Minneapolis, Minnesota.

2. Any response opposing this motion must be delivered not later than October 15, 2004, which is three days before the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 8, 2004 which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). Unless a response opposing the motion is timely filed, the court may grant the motion without a hearing.

3. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed.R.Bankr.P. 5005 and Local Rule 1070-1.. This proceeding is a core proceeding. This motion arises under 11 U.S.C. §350 and Fed.R.Bankr.P. 5010. The petition commencing this Chapter 13 case was filed on June 2, 2000. This case was dismissed on August 16, 2004.

4. If testimony is necessary as to any facts relevant to this motion, Debtor will testify in support of this motion.

5. Debtor moves the Court for an order vacating the order of dismissal dated August

16, 2004 and for such other relief as the Court deems property.

6. By motion dated September 23, 2003, the Chapter 13 Trustee requested the Court to dismiss this case because Debtor was in arrears on her payments in the amount of \$230.00. Since July, 2000, Debtor had paid a total of \$3,920 to the Chapter 13 Trustee. Required monthly payments were \$110.00. A balance of \$2,650.00 remained to be paid to complete the Chapter 13 plan. A hearing on the Trustee's motion was scheduled for October 16, 2003.

7. Since her Chapter 13 filing, Debtor had become fully disabled, has had several hospitalizations, including rehabilitation and nursing home care. At the time of her filing, Debtor's only sources of income were her SSDI benefits and a disability benefit from her former employer. As more fully described in the attached Exhibit A, Debtor's SSDI benefits were terminated by error in October, 2002. The benefits were not reinstated until August, 2003. Debtor has no other income at present other than her disability income from the Social Security Administration and her former employer.

8. In response to the trustee's motion to dismiss, Debtor proposed to resume payments of \$110 in October, 2003 and pay an additional \$45 per month for 5 months commencing in November, 2003 with a final payment of \$115 in April, 2004.

9. Debtor's payment proposal was approved by this court by order dated October 16, 2003, subject to dismissal ex parte after ten days notice by the trustee in the event of any future payment default.

10. By error, and as more fully described in Exhibit A, Debtor's SSDI benefits were suspended in February and March, 2004. Although the benefits were reinstated in April, 2004, Debtor has not received payment for the months of February and March. As a result of the interruption of the SSDI payments, Debtor defaulted on her payments to the trustee for the months of April, May, and June. Debtor was able to cure the defaults for May and June but her payment to the trustee for the months of July and August arrived after the trustee had filed her affidavit of default with the court, resulting in dismissal of the case.

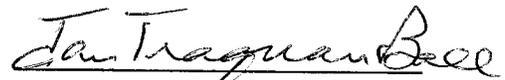
11. An order for dismissal of Debtors' Chapter 13 case was issued on August 16,

2004.

12. Debtor became aware of the dismissal after the Trustee returned her payment. Debtor wishes to reinstate her Chapter 13 case in order to pay creditors and to conclude her Chapter 13 proceeding with a discharge.

9. Based on all of the foregoing circumstances, Debtors now seek vacation of the order of dismissal. The Trustee has advised Debtors' counsel that she does not oppose Debtor's request for relief. Accordingly, no separate memorandum of law accompanies this motion as provided in Local Bankruptcy Rule 9013-5.

WHEREFORE, Debtor requests an order vacating this Court's order of dismissal dated August 16, 2004, and for such other relief as is just and equitable.



Ian Traquair Ball #4285  
Attorney for Debtor  
326 Plymouth Building  
12 South Sixth Street  
Minneapolis, MN 55402  
Tel: (612) 338-1313

Dated: 10/4/09

#### VERIFICATION

Elaine Shelly, under penalty of perjury, states that she has read the foregoing and that the facts stated therein are true and correct to the best of her knowledge and belief.



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

**CERTIFICATE OF  
SERVICE**

ELAINE SHELLY,

BKY 00-42674

Debtor(s).  
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I, Brenda Greenhalgh, declare under penalty of perjury that on October 4, 2004, I mailed copies of the foregoing Motion to Vacate Order of Dismissal to each entity named below at the stated addresses.

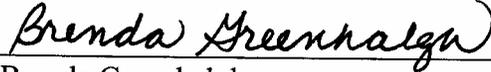
Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis MN 55402

MN Attorney General  
Tax Litigation Division  
1100 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101-2128

United States Trustee  
1015 US Courthouse  
300 South 4th Street  
Minneapolis MN 55415

Elaine Shelly  
4833 Thomas Boulevard  
Geneva, OH 44041

Dated: October 4, 2004

  
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Brenda Greenhalgh

SEP 01 2004

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August 31, 2004

Ian Tranquair Ball  
12 South Sixth Street, Ste 326  
Minneapolis, MN 55402

Dear Mr. Ball:

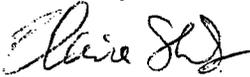
I am writing this letter to request that you seek reinstatement of my Chapter 13 bankruptcy repayment plan.

I want to explain the circumstances that led up to my default on the Chapter 13 payments. As you know, I am disabled and my income consists solely of disability benefits. During the summer of 2002, I started receiving letters from SSDI stating that my benefits would be terminated since I had continued working from July 2000. This was an error. Due to my health, I stopped working in July 2001. Since that time, I have had many hospitalizations, plus stays in rehabilitation hospitals and nursing homes. I contacted my local SSA office and followed the instructions I was given to contest the termination letters. Despite my attempts, my SSDI benefits were terminated in October 2002. The sudden drop in income wrecked havoc with my finances. I was unable to continue paying a fulltime aide who assisted me in my home and for several months had to place myself in a nursing home.

With the assistance of an attorney, I started back receiving SSDI benefits on a temporary basis in August 2003, while I had to re-establish that I was disabled. SSDI determined in January 2004, that I was indeed disabled and wrote me a letter stating that I would continue receiving benefits on a monthly basis. However, I did not receive anything from SSDI in February and March of this year. The attorney assisting me with this matter has been unable to obtain an explanation as to why I was not paid during those two months, nor has he been able to get SSDI to pay me retroactively for those two months. Again, the sudden and unexpected drop in income threw my finances into a tailspin. I maintained monthly payments until July 2004, when I finally had to catch up on arrears of utility bills or face disconnection of services. After I received a default letter and sent payments for both July and August, but unfortunately a dismissal letter came shortly after I mailed the check. The check has since been returned to me.

I want you, Mr. Ball, and the Bankruptcy Court to know that I live a frugal life. I spend money on very little more than my basic living needs and medical bills. Since filing Chapter 13, I have tried to the best of my ability to meet my monthly Chapter 13 payments and to re-establish good credit. I want to have the opportunity to complete my commitment. I still feel the same moral obligation to repay my creditors that I did when I originally opted for Chapter 13 over Chapter 7. I hope I get the chance to complete my Chapter 13 payments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elaine Shelly".

Elaine Shelly

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

Elaine Shelly,

Debtor.

ORDER VACATING ORDER  
OF DISMISSAL  
BKY 00-42674

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This case came before the Court on a motion by the Debtors for an order vacating an order of dismissal previously entered on August 16, 2004. Based on the motion of Debtor, and the file, records, and proceeding herein,

IT IS ORDERED:

The order dismissing this case dated August 16, 2004 is hereby vacated; the Clerk of this Court shall mail copies of this order as notice hereof to the Debtor, her attorney, the Chapter 13 trustee, the United States Trustee, and all creditors and other parties in interest.

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Chief Bankruptcy Judge

Dated: