

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Bky. No. 03-48502-RJK
Chapter 7

Adam Nelson

Debtor.

NOTICE OF HEARING AND MOTION FOR TURNOVER OF PROPERTY

TO: WILLIAM JOANIS, DEBTOR AND THE UNITED STATES TRUSTEE

1. TIMOTHY D. MORATZKA, Chapter 7 Trustee herein, moves the Court for the relief requested below and gives Notice of Hearing herewith.
2. The Court will hold a hearing on this motion on October 6, 2004, at 9:30 a.m. in Courtroom No. 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota or as soon thereafter as counsel can be heard.
3. Any objection to the relief requested herein must be filed and delivered not later than October 3, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 27, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this Motion under 28 U.S.C. § 157 and § 1334 and Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on December 9, 2003. The case is now pending in this Court. This Motion is filed under Local Rule 6072-1; this proceeding arises under 11 U.S.C. §§ 541, 542 (a), 521 (3) and (4).

5. On or about June 2, 2004 and August 3, 2004, the Trustee sent letters to Debtor, with copies to Debtor's attorney, advising the Debtor that \$1,688.24 of the 2003 State and Federal tax refunds were property of the bankruptcy estate and must be turned over to the Trustee. Exhibit "A".

6. The Debtor has failed to turnover to the Trustee the Estate's portion of the 2003 Federal and State tax refunds.

10. The Debtor has failed to cooperate with the Trustee. Trustee has incurred fees and costs as a result of Debtor's breach of duties.

WHEREFORE, Timothy D. Moratzka, Chapter 7 Trustee moves this Court for an order

1. Requiring the Debtors to turnover \$1,688.24 which is the total amount of the 2003 Federal and State tax refunds due the estate.

2. Granting any such other and further relief as the Court deems just and equitable.

MACKALL, CROUNSE & MOORE, PLC

Dated: September 13, 2004

By /e/ Timothy D. Moratzka
Timothy D. Moratzka (#028841X)
Patrick C. Summers (#028841X)
Attorneys for Trustee
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, MN 55402-2859
(612) 305-1400

VERIFICATION

I, TIMOTHY D. MORATZKA, named in the foregoing Notice of Hearing and Motion for Turnover of Property declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on September 13, 2004

/e/Timothy D. Moratzka
TIMOTHY D. MORATZKA

TIMOTHY D. MORATZKA
TRUSTEE IN BANKRUPTCY
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, MN 55402
Telephone: (612) 305-1400 • Facsimile: (612) 305-1414

Timothy D. Moratzka
Attorney at Law

June 2, 2004

Adam Nelson
1309 Florida Avenue North
Golden Valley, MN 55427

Re: Your Bankruptcy

Dear Mr. Nelson:

Please be advised that I have received and reviewed your 2003 income tax returns. As you know, a portion of your refund is the property of the estate and must be turned over to me as Trustee for your estate. The following is the formula that we use to calculate the estate's portion of the refund:

Petition Filed: December 9, 2003 (344th day of the year)

344 divided by 365 days per year = 94%

94% x \$1,328.00 (Amount of Federal Refund) =	\$1,248.32
94% x \$468.00 (Amount of State Refund) =	\$439.92

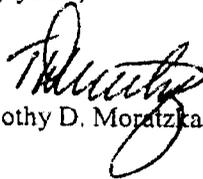
Total amount due the estate = \$1,688.24

Please remit the amount above stated in certified funds or money order payable to Timothy D. Moratzka, Trustee in Bankruptcy, when you receive your refunds. Please be advised that failure to remit said amount could result in the dismissal of your bankruptcy.

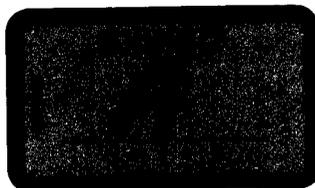
If you should have any questions or problems have arisen, please contact my paralegal, Lorraine, at (612) 305-1502 immediately so that we can make arrangements for the payment of said amount.

Very truly yours,

By


Timothy D. Moratzka

CC: Debtor's Attorney
TDM/lcj#704976v1



TIMOTHY D. MORATZKA
TRUSTEE IN BANKRUPTCY

Timothy D. Moratzka
Attorney at Law

1400 AT&T Tower
901 Marquette Avenue
Minneapolis, MN 55402
Telephone: (612) 305-1400 • Facsimile: (612) 305-1414

August 3, 2004

Adam Nelson
1309 Florida Avenue North
Golden Valley, MN 55427

Re: Your Bankruptcy

Dear Mr. Nelson:

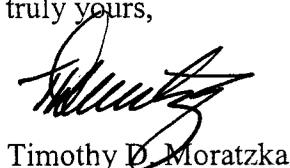
On or about June 2, 2004, we advised you that \$1,688.24 was due the estate from your 2003 tax refunds. Copy of our letter is enclosed. We have no record of receiving the amount due the estate.

Please remit the amount above stated in certified funds or money order payable to Timothy D. Moratzka, Trustee in Bankruptcy, when you receive your refunds. Please be advised that failure to remit said amount by August 23, 2004, could result in the dismissal of your bankruptcy.

If you should have any questions or problems have arisen, please contact my paralegal, Lorraine, at (612) 305-1502 immediately so that we can make arrangements for the payment of said amount.

Very truly yours,

By


Timothy D. Moratzka

CC: Debtor's Attorney

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Adam Nelson
Debtor(s)

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Bky. No. 03-48502-RJK

Amy J. Ditty, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Turnover of Property and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

William J. Joanis
5555 12th Avenue East
Suite 110
Shakopee, MN 55379

CERTIFIED MAIL

Adam Nelson
1309 Florida Avenue North
Golden Valley, MN 55427

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 13, 2004

Signed: /e/ Amy J. Ditty

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Bky. No. 03-48502-RJK
Chapter 7

Adam Nelson

Debtor.

ORDER

This matter came on for hearing before the undersigned Bankruptcy Judge on October 6, 2004, on the Motion of Timothy D. Moratzka, Chapter 7 Trustee, for turnover of 2003 tax refunds of the above-named debtor.

Upon the Motion of the Trustee, arguments of counsel, and the documents of record herein, and the Court being fully advised in the premises. Appearances were noted in the Court's record.

IT IS HEREBY ORDERED:

1. Debtors turn over \$1,688.24 of the 2003 State and Federal tax refunds.
2. Debtor's failure to comply with terms of this Order shall be subject to pecuniary sanctions upon motion, notice and hearing.

DATE _____

Robert J. Kressel
United States Bankruptcy Judge