

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

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In re:

BKY No. 04-41269

Chapter 7

Michael J. Lindell  
Karen A. Lindell,

Debtors.

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Wayne Salden,

ADV No. 04-4125

Plaintiff,

vs.

Michael J. Lindell and Karen A. Lindell,

Defendants.

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**NOTICE OF MOTION AND MOTION**

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TO: The Honorable Robert J. Kressel, Judge of U.S. Bankruptcy Court, the Office of the United States Trustee, Dwight Lindquest, Esq., Trustee, Defendant Michael J. Lindell and his counsel Mark L. Soule, Esq., 816 West St. Germain, Suite 503, St. Cloud, Minnesota 56301 and all parties-in-interest.

PLEASE TAKE NOTICE, that Mr. Wayne Salden (“Movant”), by and through his undersigned attorney, move the court for the relief requested below and gives notice of hearing. This motion is brought under Local Rule 7041.

1. The court will hold a hearing on this motion at 11:00 a.m. on November 3, 2004, or as soon thereafter as counsel may be heard, before the Honorable Robert J. Kressel, Judge of United States Bankruptcy Court, Courtroom 8W, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.
2. **Any response to this motion must be filed and delivered not later than Friday, October 29, 2004, which is three days before the time set for the**

**hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than Monday, October 25, 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. This court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§1334 and 157. This motion arises under Local Rule 7041. These proceedings are core proceedings.
4. This case was commenced by the filing of a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. This case is now pending in this court.
5. The schedules originally filed in the case contained numerous errors and omissions that were substantial and material. These omissions included, apparently, preferential payments to insiders and to others, and the failure to disclose the disposition of various assets.
6. Through discovery in the case, Movant was satisfied that while there were omissions that were patent and obvious, they were not attributed to any improper intent on the part of the Defendant. Consequently, Movant concluded that he was not likely to succeed on the merits at trial.
7. The parties have entered into a stipulation providing for dismissal of this adversary proceeding.
8. The Movant has received no consideration of any kind for the dismissal of the case.

9. If any objection is raised, Mr. Wayne Salden, whose address is 15775 County Road 43, Carver, Minnesota 55315, and Mr. Mark Lindell, whose address is 1023 Sunny Ridge Drive, Carver, Minnesota 55315 shall be called as witnesses.

Respectfully submitted,

**Joseph W. Dicker, P.A.**

Dated: October 15, 2004

/s/ Joseph W. Dicker  
Joseph W. Dicker (158264)  
Suite 208  
1406 West Lake Street  
Minneapolis, MN 55408  
Telephone: (612) 827-5941

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**MEMORANDUM OF LAW**

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**INTRODUCTION**

This Memorandum of Law is submitted by Movant, Wayne Salden, in support of his motion to dismiss the above-captioned adversary proceeding.

**FACTUAL BACKGROUND**

Defendant, Michael Lindell, and his wife filed for relief under Chapter 7 of the United States Bankruptcy Code. The Debtors filed schedules. Based on information available to Movant, the schedules appeared to have omitted significant information. The omissions appeared to be substantial, including the Debtors' failure to disclose ownership or the disposition of a homestead, failure to account for the disposition of a business contract, and other matters. Subsequent discovery also suggested that the Debtors also

initially failed to disclose potentially preferential payments that would likely be avoidable under applicable provisions of the Bankruptcy Code.

Movant commenced this adversary proceeding seeking an order denying the Debtors' discharge based on their failure to disclose this information. Subsequent to the commencement of this action, the Debtors filed amended schedules. The amended schedules demonstrated that the original schedules filed were incomplete.

Through discovery in the case, the Defendant indicated that the Debtors had in fact disclosed this information to their attorney, but that the attorney failed to incorporate the information in the schedules. It also appeared that the Debtors had realized the errors prior to the commencement of this adversary proceeding and had instructed his attorney to correct the schedules. These corrections were apparently in process at the time this adversary proceeding was commenced.

Based on these circumstances, it appears that the Debtors were not careful in reviewing the schedules. However, it appears that the testimony is likely to be that there was full disclosure made to the attorney and that the attorney was apparently in error in completing the schedules. The adversary proceeding was commenced under 11 U.S.C. §727 which provides for the denial of a discharge if the debtor, with intent to hinder, delay or defraud creditors or an officer of the estate charged with custody of the property of the estate, has transferred, removed, destroyed, mutilated or concealed, or has permitted to be transferred, removed, destroyed, mutilated or concealed, property of the Debtor within one year before the date of the filing of the Petition. The section requires intentional acts. The evidence demonstrates to the Movant that the Debtors lacked the

requisite intent. It does not appear that the Plaintiff can prevail at trial. It is for reason that the Movant has determined to seek dismissal of this adversary proceeding.

Local Rule 7041 requires that dismissal of an adversary proceeding seeking denial of a discharge be approved upon motion, with notice to all creditors. This rule is designed to prevent creditors from using a denial of discharge action as leverage to settle an individual claim. Here, Plaintiff is seeking dismissal of the case without consideration based on his conclusions concerning the substantive allegations of the case and the likelihood of prevailing on the merits. Plaintiff has received no consideration for dismissal.

### **CONCLUSION**

This adversary proceeding should be dismissed.

Respectfully submitted,

**Joseph W. Dicker, P.A.**

Dated: October 15, 2004

/e/ Joseph W. Dicker  
Joseph W. Dicker (158264)  
Suite 208  
1406 West Lake Street  
Minneapolis, MN 55408  
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**AFFIDAVIT OF WAYNE SALDEN**

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STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN     )

COMES NOW, Wayne Salden, being first duly sworn, states and alleges as follows:

1. I am the Plaintiff in the above-captioned adversary proceeding. I made this Affidavit of my own knowledge and if called to testify orally would testify substantially as follows.
2. I commenced this adversary proceeding seeking an order denying the Debtors a discharge. My claim was based on substantial errors and omissions in the Debtors' original schedules filed in the bankruptcy case. The Debtor's filed

amended schedules following the commencement of this adversary proceeding.

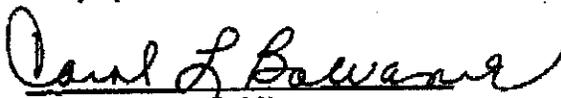
3. Through discovery it became apparent that the errors and omissions were disclosed by the Debtors to their attorney and that the attorney prepared and filed the erroneous schedules.
4. Based on these discovered circumstances, I do not believe I can prevail at trial on the merits.
5. I have received no consideration of any kind for my agreement to dismiss this adversary proceeding.

FURTHER YOUR AFFLIANT SAYETH NOT.

  
Wayne Salden

Subscribed and sworn to before me

this 14 day of Oct, 2004.

  
Notary Public



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**CERTIFICATE OF SERVICE**

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Joyce L. Tomlinson, of the City of Minneapolis, County of Hennepin, State of Minnesota, upon penalty of perjury, hereby says that on October 15, 2004, she served the attached verified Notice of Motion and Motion, Memorandum of Law, and Affidavit of Wayne Salden upon the following:

All parties-in-interest on the attached service list.

by U.S. Mail by mailing to said parties true and correct copies thereof, enclosed in an envelop, postage prepaid, and depositing same in the post office at Minneapolis, Minnesota, directed to said attorney at the address indicated.

/e/ Joyce L. Tomlinson  
Joyce L. Tomlinson

## Service List

Alegis Group  
P.O. Box 741011  
Houston, TX 77274-1011

American Accounts & Advisors, Inc.  
3904 Cedarvale Drive  
Eagan, MN 55122

ATA  
Sunrise Credit Services  
260 Airport Plaza  
Farmingdale, NY 11735

Bankfirst  
1509 West 41<sup>st</sup> Street  
Souix Falls, SD 57105-6370

Blue Green Corp.  
Suite 100  
4960 Conference Center  
Boca Raton, FL 33431

Boureau & Associates  
5 Industrial Way  
Salem, NH 03079

Capital One  
P.O. Box 85015  
Richmond, VA 23285-5015

Certegy  
P.O. Box 30046  
Tampa, FL 33630-3046

Citilease Financial Group  
Chicago, IL 60601-5802

CLX Systems, Inc.  
6031  
Woodhill Lane  
Rockford, MN 55373-2102

Collection Resources

P.O. Box 2270  
St. Cloud, MN 56302-2270

Credit Management Systems, Inc.  
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Minnetonka, MN 55343

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Dept. 8799  
Chicago, IL 60674-8093

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P.O. Box 3330  
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Fashion Bug  
745 Center Street  
Milford, OH 45150

Flamingo Laughlin  
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Laughlin, NV 89029

Grand Casino  
P.O. Box 30046

Tampa, FL 336303046

Grand Casino Tunica  
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Robinsonville, MS 38664

Henry's Foods  
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Alexandria, MN 56308-1057

Holiday Inn  
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Duluth, MN 55802

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St. Paul, MN 55164-0651

Murphy Martin Recovery, Inc.  
306 East Tyler Street  
Suite 400  
Tampa, FL 33602

National Recoveries, Inc.  
11000 Central Avenue NE  
Blaine, MN 55434

NCNIC Finance  
14001 University Avenue  
Clive, IA 50325

NCO Financial Systems  
515 Pennsylvania NE  
Fort Washington, PA 19034-3303

North Shore Agency, Inc.  
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Westbury, NY 11590-8901

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Westbury, NY 11590-8901

OSI Collection Services, Inc.  
P.O. Box 550720  
Jacksonville, FL 32256

Palisades Collection, LLC  
P.O. Box 1244  
Englewood Cliffs, NJ 07632

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Victoria, MN 55386

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Pleasanton, CA 94566-9007

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Victoria, MN 55368-7705

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