

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

GERALD EUGENE TOBERMAN,

Debtor.

BKY 04-40100

ADV 04-4174

RANDALL L. SEAVER, Trustee,

Plaintiff,

-vs-

GERALD EUGENE TOBERMAN,

Defendant.

ANSWER

Gerald Eugene Toberman, ("Mr. Toberman"), for his Answer to the Complaint of Randall Seaver, Trustee ("Trustee"), states and alleges as follows:

Mr. Toberman denies each and every allegation, matter or statement contained in the Complaint and each and every part or portion thereof, except as hereinafter specifically admitted or otherwise answered.

1. Mr. Toberman admits that Randall L. Seaver was appointed as Trustee in Mr. Toberman's bankruptcy case.
2. Mr. Toberman admits the allegations in paragraph 2.
3. Mr. Toberman admits the allegations in paragraph 3.
4. Mr. Toberman admits the allegations in paragraph 4.
5. Mr. Toberman admits the allegations in paragraph 5.

6. Mr. Toberman denies the allegations in paragraph 6 with regard to the corporations and entities named in paragraph 6 of the Complaint. Mr. Toberman is presently without sufficient knowledge or information to form a belief as to the truth or falsity of said allegations as to any unnamed corporations and entities and as such, denies them.

7. Pursuant to the William Toberman Trust Agreement dated December 31, 1992 (“Trust”), Mr. Toberman was named trustee of the Trust. Mr. Toberman affirmatively alleges that the Trust owns stock in Bel Clare Estates, Inc.; Bel Clare Estates, Inc. holds asset(s) that were previously owned by Mr. Toberman. Mr. Toberman affirmatively alleges that Nancy Toberman receives funds, which may exceed \$90,000 per year, pursuant to an assignment by William Toberman and Barbara Toberman to Nancy Toberman of all rights to payment of dividends, profits or the like related to Bel Clare Estates, Inc. Mr. Toberman denies the remaining allegations contained in paragraph 7.

8. Mr. Toberman admits that he had an ownership interest in Unit 3004 CIC No. 532 West Oaks of Minnetonka Condominium (“Minnetonka Condominium”) at one time, but that such interest was transferred in 1991. After such time, there were intervening transfers of title for the sole purpose of refinancing the Minnetonka Condominium which transfers were necessary due to Barbara Toberman’s disability. Mr. Toberman admits that he leases a Lincoln Continental. Mr. Toberman denies an interest in a Lexus automobile and affirmatively alleges that Nancy Toberman has an interest in a Lexus automobile. Mr. Toberman denies the remaining allegations contained in paragraph 8 and its subparts.

9. Mr. Toberman affirmatively alleges that he assisted with an application for a conditional use permit for Excel Marina. Mr. Toberman affirmatively alleges that he assisted with the negotiation to obtain a dealer’s bond for Edison Homes, Inc. Mr. Toberman denies that

he signed various insurance documents as a “Vice President” on behalf of Towns Edge Terrace. Mr. Toberman is without sufficient knowledge as to the truth or falsity of the remaining allegations contained in paragraph 9 and its subparts and as such, denies them.

10. Mr. Toberman denies the allegations contained in paragraph 10 and its subparts.
11. Mr. Toberman denies the allegations contained in paragraph 11 and its subparts.
12. Mr. Toberman denies the allegations contained in paragraph 12.
13. Mr. Toberman denies the allegations contained in paragraph 13.
14. Mr. Toberman denies the allegations contained in paragraph 14.
15. Mr. Toberman denies the allegations contained in paragraph 15.

AFFIRMATIVE DEFENSES

16. Trustee fails to state a claim upon which relief can be granted.
17. Any income, interests, assets, liabilities or transfers that Mr. Toberman failed to disclose or alleged false oaths or statements made by Mr. Toberman were not material; were irrelevant or insignificant; were due to his lack of knowledge of them; were due to inadvertence; and/or were the result of poor legal advice upon which Mr. Toberman reasonably relied in good faith.
18. Mr. Toberman lacked the requisite intent or state of mind to mislead the Court and his creditors to warrant a denial of discharge.
19. Mr. Toberman had no obligation to disclose in his bankruptcy schedules and statements any of the assets, interest or income owned by Nancy, Barbara or William Toberman or any transfers of such interests by them.

20. Any property interests transferred by Mr. Toberman to Barbara Toberman before or after the filing of Mr. Toberman's bankruptcy case were not property of his estate within the meaning of 11 U.S.C. § 541 of the United States Bankruptcy Code.

21. Mr. Toberman reserves the right to amend his Answer to include any and all other defenses as such defenses become known through the discovery process.

WHEREFORE, Defendant Gerald Toberman prays for the following relief: (a) for judgment dismissing Plaintiff's complaint with prejudice on the merits; (b) for judgment awarding Defendant Gerald Toberman his attorneys' fees and costs; and (c) for judgment granting any other relief that the Court deems appropriate.

Dated: August 25, 2004

HENSON & EFRON, P.A.

/e/ William I. Kampf
William I. Kampf, 0053387
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BKY 04-40100

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ADV 04-4174

Randall L. Seaver,

Plaintiff,

vs.

PROOF OF SERVICE

Gerald Eugene Toberman,

Defendant.

The undersigned states that she is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, she served the following:

Answer; and Proof of Service

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail, unless otherwise noted; and that she certifies the foregoing under penalty of perjury.

U.S. Trustee's Office
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Fax: 612-664-5516

Michael S. Dove, Esq.
Gislason & Hunter LLP
2700 South Broadway/PO Box 458
New Ulm, MN 56073-0458
Fax: 507-354-8447

Dated: August 25, 2004

/e/ Tawney Jameson