

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: BKY Case No. 04-40052-NCD  
Chapter 7  
Lorene Edwards,  
Debtor(s).

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Julia A. Christians, Trustee, ADV No. 04-4203-NCD  
Plaintiff,  
vs.  
Lorene Edwards,  
Defendant(s).

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**NOTICE OF HEARING AND MOTION**  
**FOR DEFAULT JUDGMENT**

1. Julia A. Christians, Trustee ("Plaintiff") by and through her undersigned attorneys, moves the Court for the relief requested below.
2. The Honorable Nancy C. Dreher, United States Bankruptcy Judge, will hold a hearing on this motion at 10:30 a.m., on September 22, 2004, in Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel may be heard.
3. Any response to the motion must be in writing and be filed and delivered not later than September 17, 2004, which is three (3) days before the hearing date (excluding Saturdays, Sundays, and holidays) or filed and served by mail not later than September 13, 2004, which is seven days prior to the hearing (excluding Saturdays, Sundays, and holidays). **If no response is timely served and filed, the Court may enter an Order granting the requested relief without a hearing.**

4. This case was commenced as a Chapter 7 case on January 6, 2004 and is now pending before this Court.

5. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § 157 and 1334 and Bankruptcy Rule 5005. This motion arises under 11 U.S.C. § 542 and §727 and Bankruptcy Rule 7055, and Plaintiff seeks an order granting default judgment in this proceeding. This motion is filed under Bankruptcy Rule 9014. Pursuant to 28 U.S.C. §157, this is a core proceeding.

6. Based upon the Affidavit of Plaintiff Julia A. Christians, Trustee, and the documents filed within this proceeding, the Trustee seeks entry of judgment in favor of Plaintiff and against Defendant for turnover and revocation of Debtor's discharge as set forth in Plaintiff's Complaint.

**WHEREFORE**, Plaintiff Julia A. Christians, Trustee, respectfully requests that the Court grant her motion for default judgment, awarding Plaintiff judgment in the amount of \$5,505.00, plus prejudgment interest and Plaintiff's costs and disbursements herein; revoking Debtor's discharge; and, granting such other and further relief as the Court may find just and equitable.

LAPP, LIBRA, THOMSON, STOEBNER  
& PUSCH, CHARTERED

Dated: August 17, 2004

/e/ Julia A. Christians  
Julia A. Christians, (#157867)  
One Financial Plaza, Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
(612) 338-5815

Attorneys for Plaintiff, Julia Christians, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**AFFIDAVIT OF JULIA A. CHRISTIANS, TRUSTEE**

Julia A. Christians, being first duly sworn, states and deposes as follows:

1. The she is the trustee in this bankruptcy case.
2. After her filing, Debtor Lorene Edwards (hereinafter “Debtor” or “Defendant”) received funds arising from non-exempt tax refunds due at the time of filing in the amount of \$5,505.00.
3. Said funds constitute property of the bankruptcy estate.
4. Debtor failed to surrender said funds to the Trustee.
5. The trustee made written demand upon Debtor for turnover of said funds, but Debtor failed to comply.
6. On April 21, 2004, this Court entered an Order directing Debtor to turn over to the Trustee within seven days copies of her tax returns and to turnover all state, federal and

property tax refunds due as of the filing date. On or about April 30, 2004, Debtor did turn over copies of her 2003 tax returns showing refunds amounting to \$5,505.00.

7. Debtor acquired property of the estate and knowingly and fraudulently failed to deliver or surrender such property to the trustee.

8. Debtor has refused, in her case, to obey a lawful order of the Court.

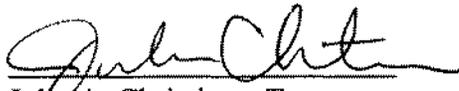
9. On July 14, 2004, the trustee duly served the Summons and Complaint herein on Defendant. More than 30 days have passed since the Court issued the Summons herein on July 14, 2004. Defendant has not served Plaintiff with an Answer or any other form of responsive pleading.

10. Plaintiff's costs incurred herein amount to \$156.00 for the filing fee and service costs. Interest has accrued from the dated of the commencement of the action that amounts to \$20.51.

11. To Affiant's best knowledge, Defendant's full name and listed address is: Lorene Edwards, 3339 James Avenue N., Minneapolis, MN 55412.

12. To Affiant's best knowledge, Defendant is not now in the military service or of incompetent status.

Dated: August 18, 2004

  
Julia A. Christians, Trustee

Subscribed and sworn to before me  
this 18<sup>th</sup> day of August, 2004

  
Notary Public



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**MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR DEFAULT OR SUMMARY JUDGMENT**

Julia A. Christians, Trustee (“Plaintiff”), submits this Memorandum of Law in support of her Motion for Default Judgment or, in the alternative, Summary Judgment.

ARGUMENT

I. STANDARDS FOR DEFAULT JUDGMENT

Bankruptcy Rule 7055, incorporating Fed.R.Civ.P. 55, provides that entry of default judgment is appropriate when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise.

II. PLAINTIFF HAS ESTABLISHED THE ELEMENTS TO MAINTAIN AN ACTION FOR TURNOVER AND REVOCATION OF DISCHARGE.

Pursuant to 11 U.S.C. §542 (a), Debtor Lorene Edwards (hereinafter “Debtor” or “Defendant”) was obligated to turn over to the trustee all non-exempt property of the estate including tax refunds due the debtor, but not yet paid, at the time of the filing. After her filing,

Debtor received funds arising from non-exempt tax refunds due at the time of filing in the amount of \$5,505.00. *Complaint, para. 3, Affidavit of Julia A. Christians, para.2.*

Despite due demand, Debtor failed to surrender the funds arising from the non-exempt tax refunds to the Trustee. *Affidavit of Julia A. Christians, para. 4 and 5.*

On April 21, 2004, this Court entered an Order directing Debtor to turnover to the Trustee within seven days copies of her tax returns and all state, federal and property tax refunds due as of the filing date. On or about April 30, 2004, Debtor did turn over copies of her 2003 tax returns showing refunds amounting to \$5,505.00. *Affidavit of Julia A. Christians, para.6.*

Debtor acquired property of the estate and knowingly and fraudulently failed to deliver or surrender such property to the trustee. *Affidavit of Julia A. Christians, para.78.* Debtor has refused, in her case, to obey a lawful order of the Court. *Affidavit of Julia A. Christians, para. 8.*

On July 14, 2004, the trustee duly served the Summons and Complaint herein on Defendant, seeking turnover of the funds due the estate and revocation of her discharge. More than 30 days have passed since the Court issued the Summons herein on July 14, 2004. Defendant has not served Plaintiff with an Answer or any other form of responsive pleading. *Affidavit of Julia A. Christians, para. 9.*

Pursuant to 11 U.S.C. §727(d)(2) and (3), the court shall revoke a discharge if ... the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report such acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or, the debtor committed an act specified in subsection (a)(6) of this section, including the debtor's failure to obey a lawful order of the court. 11 U.S.C. §727(d)(2). Grounds exist for the revocation of Debtor's discharge.

Accordingly, Plaintiff is entitled to default judgment on its action, for turnover in the amount of \$5,505.00 plus prejudgment interest, costs and disbursements, and for revocation of Debtor's discharge.

LAPP, LIBRA, THOMSON, STOEBNER  
& PUSCH, CHARTERED

Dated: August 17, 2004

/e/ Julia A. Christians  
Julia A. Christians, (#157867)  
One Financial Plaza, Suite 2500  
120 South Sixth Street  
Minneapolis, MN 55402  
(612) 338-5815

Attorneys for Plaintiff, Julia A. Christians, Trustee

UNITED STATES BANKRUPTCY COURT  
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In re:

Chapter 7

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Debtor.

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Julia A. Christians, Trustee,

Plaintiff,

ADV No. 04-4203-NCD

vs.

Lorene Edwards,

Defendant.

**UNSWORN CERTIFICATE OF SERVICE**

I, Sarah L. Fortin, declare under penalty of perjury that on August 19, 2004, I mailed copies of the attached **Notice of Hearing and Motion for Default Judgment, Affidavit, Memorandum of Law, and Findings of Fact** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Lorene Edwards  
3339 James Avenue N  
Minneapolis, MN 55412

U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Craig W. Andresen, Esq.  
2001 Killebrew Drive  
Suite 330  
Bloomington, MN 55425

Executed on: August 19, 2004

/s/ Sarah L. Fortin  
Sarah L. Fortin, Legal Secretary  
Lapp, Libra, Thomson, Stoebner &  
Pusch, Chartered  
120 South Sixth Street, Suite 2500  
Minneapolis, MN 55402  
612/338-5815

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**FINDINGS OF FACT**

1. After her filing, Debtor Lorene Edwards (hereinafter “Debtor” or “Defendant”) received funds arising from non-exempt tax refunds due at the time of filing in the amount of \$5,505.00.
2. Said funds constitute property of the bankruptcy estate.
3. Debtor failed to surrender said funds to the Trustee.
4. The trustee made written demand upon Debtor for turnover of said funds, but Debtor failed to comply.
5. On April 21, 2004, this Court entered an Order directing Debtor to turn over to the Trustee within seven days copies of her tax returns and to turn over all state, federal and property tax refunds due as of the filing date.
6. On or about April 30, 2004, Debtor did turn over copies of her 2003 tax returns showing refunds amounting to \$5,505.00.

7. Debtor acquired property of the estate and knowingly and fraudulently failed to deliver or surrender such property to the trustee.
8. Debtor has refused, in her case, to obey a lawful order of the Court.
9. On July 14, 2004, the trustee duly served the Summons and Complaint herein on Defendant, seeking turnover of the funds due the estate and revocation of her discharge. More than 30 days have passed since the Court issued the Summons herein on July 14, 2004. Defendant has not served Plaintiff with an Answer or any other form of responsive pleading.

### **CONCLUSIONS OF LAW**

1. Plaintiff is entitled to a judgment against Defendant in the amount of \$5,505.00.
2. Grounds exist for revocation of Defendant's discharge.

### **ORDER FOR JUDGMENT**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. That judgment be entered in favor of Plaintiff and against Defendant, in the amount of \$5,505.00, plus \$156.00 in costs, plus interest in the amount of \$20.51, for a total of \$5,681.51; and,
2. That Debtor's discharge is revoked.

**LET JUDGMENT BE ENTERED ACCORDINGLY HEREWITH.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy C. Dreher  
United States Bankruptcy Judge