

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD  
Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

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

TO: ALL PARTIES IN INTEREST.

1. Rabo AgServices, Inc., formerly known as Ag Services of America, Inc., as servicer for Ag Acceptance Corporation ("Rabo") by its undersigned attorney, moves the Court for an entry of default judgment against Defendant Kevin J. Smith ("Smith") for the relief requested in the Adversary Complaint filed in the above-captioned matter and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 a.m. on October 6, 2004, before the Honorable Nancy C. Dreher, in Courtroom No. 7 West, United States Courthouse, at 301 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel may be heard.

3. Pursuant to Local Rules 9013-2 and 9006-1 any objection or response to this motion must be filed and delivered not later than September 29, 2004, which is seven days before the time set for the hearing, or filed and served by mail not later than September 24, 2004, which is ten days before the time set for hearing. **PURSUANT TO LOCAL RULE 9013-2(f), UNLESS A WRITTEN RESPONSE IS TIMELY SERVED AND FILED, THE BANKRUPTCY COURT MAY ENTER AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT A HEARING.**

4. This motion is filed pursuant to Bankruptcy Rule 7055 and Local Rules 9013-1 through 9013-3, and Rabo requests entry of a default judgment against Smith for the relief requested in the Adversary Complaint.

5. The Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 157 and 133.4 and Bankruptcy Rule 7001 et seq and 9014. This Application is submitted pursuant to the Bankruptcy Rule 7055 and Local Rule 7055-1.

6. On May 5, 2004, Smith filed a Petition seeking relief under Chapter 7 of the Bankruptcy Code.

7. Rabo commenced this adversary action by filing and serving a Summons and Complaint that was served via U.S. mail and certified mail upon Smith on August 2, 2004.

8. Pursuant to Bankruptcy Rule 7012, Smith had thirty (30) days in which to respond to Rabo's Adversary Complaint.

9. Smith has failed to answer or otherwise defend in this adversary proceeding.

10. Smith's failure to answer within sufficient time, entitles Rabo to the entry of a default judgment pursuant to Bankruptcy Rule 7055.

WHEREFORE Rabo respectfully moves the Court for an order for default judgment against Defendant Kevin J. Smith, and for such other relief as may be just and equitable.

Dated this 12<sup>th</sup> day of September, 2004.



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Michael S. Dove #214310  
GISLASON & HUNTER LLP  
Attorneys for Plaintiff  
2700 South Broadway  
P. O. Box 458  
New Ulm, MN 56073-0458  
Phone: 507 354-3111

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD

Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

**APPLICATION FOR ENTRY OF DEFAULT JUDGMENT**

Rabo AgServices, Inc., as servicer for Ag Acceptance Corporation (“Rabo”) moves the Court for an entry of default judgment against defendant Kevin J. Smith (“Smith”) for the relief requested in the Complaint filed in the above-entitled matter.

The Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Bankruptcy Rule 7001 *et seq.* and 9014. This Application is submitted pursuant to the Bankruptcy Rule 7055 and Local Rule 7055-1

This application is based upon the following:

1. Summons and Complaint, together with proof of service on Smith;
2. Notice of Hearing and Motion for Default Judgment;
3. Affidavit of Default;
4. Affidavit of Identification of the defaulting party;
5. Affidavit on the Merits and the Amounts Due;

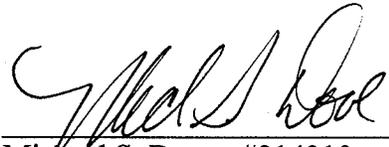
6. Affidavit of Attorney's Fees; and

7. Proposed Findings of Fact, Conclusions of Law and Order for Judgment.

No Answer has been received upon the service of the Summons and Complaint.

Therefore, plaintiff is entitled to entry of judgment pursuant to Bankruptcy Rule 7055-1.

Dated this 9<sup>th</sup> day of September, 2004.



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Michael S. Dove #214310  
GISLASON & HUNTER LLP  
Attorneys for Plaintiff  
2700 South Broadway  
P. O. Box 458  
New Ulm, MN 56073-0458  
Phone: 507 354-3111

NULIB:186097.1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD  
Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

**AFFIDAVIT OF DEFAULT**

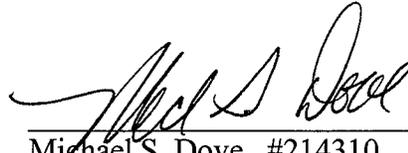
STATE OF MINNESOTA     )  
                                          ) ss.  
COUNTY OF BROWN     )

I, Michael S. Dove, being duly sworn, state as follows:

1. I am an attorney for Rabo AgServices, Inc., as servicer for Ag Acceptance Corporation (“Rabo”) in the above entitled action.
2. Rabo served a copy of the Adversary Summons and Complaint upon Defendant Kevin J. Smith (“Smith”) upon via First Class U.S. Mail on August 2, 2004.
3. An Unsworn Declaration of Service is on file in this action evidencing service upon the defaulting Smith.
4. Smith has failed to answer or otherwise defend in this adversary proceeding.
5. The time allowed by law and specified in the Summons and Complaint for the defendant to answer the Complaint in this action has lapsed.

6. Accordingly, Smith is in default herein.

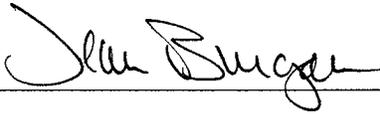
FURTHER YOUR AFFIANT SAYETH NOT.



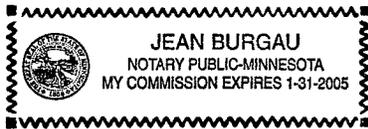
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Michael S. Dove #214310  
GISLASON & HUNTER LLP  
Attorneys for Plaintiff  
2700 South Broadway  
P. O. Box 458  
New Ulm, MN 56073-0458  
Phone: 507-354-3111

Subscribed and sworn to before me  
this 9th day of September, 2004.



NULIB:186100.1



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD

Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

**AFFIDAVIT ON THE MERITS AND AMOUNT DUE**

Andy Bentley, being first duly sworn, deposes and states the following:

1. I am a Special Assets Manager for Rabo AgServices, Inc., as servicer for Ag Acceptance Corporation ("Rabo"), the plaintiff in the above-entitled matter, and I have personal knowledge of the facts that follow.

2. Rabo financed Defendant Kevin J. Smith's ("Smith") farming operations from 2001 to 2003. Smith executed a Master Promissory Note on October 17, 2002, in the principal amount of \$200,000.00 in favor of Rabo (the "Note").

3. To secure advances made pursuant to the Note, Smith executed security agreements wherein he granted Rabo a security interest in various items of personal property, including but not limited to, machinery and equipment, rights to payment, farm products, and proceeds thereof (the "Collateral").

4. Rabo duly perfected its security interest in the Collateral by filing UCC-1's and Effective Financing Statements.

5. Smith failed to turn over all proceeds and/or account for the disposition of certain items of Collateral, including but not limited to the following:

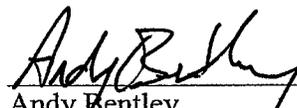
- a. Proceeds from the sale of over 4,000 bushels of corn from the 2003 crop year;
  - b. Proceeds from the sale of over 1,000 bushels of soybeans from the 2003 crop year;
  - c. Various equipment and machinery sold by Debtor during the fall/winter of 2003;
6. Smith's liquidation, sale, transfer and disposition of Collateral, as set forth above,

were subject to Rabo's security interest.

7. Smith failed to remit all the proceeds of said sales, transfers, rights to payment of Collateral to Rabo in violation of the security agreement.

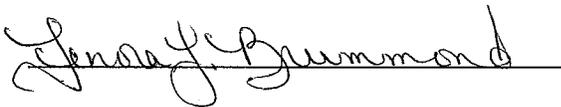
8. As of September 8, 2004, Smith was indebted to Rabo in the principal amount of \$21,661.77, plus accrued interest of \$1,991.84, for a total amount past due of \$23,653.61.

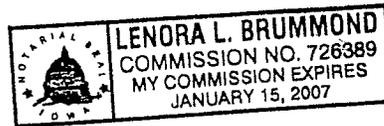
FURTHER YOUR AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Andy Bentley

*CEU*

Subscribed and sworn to before me  
this 10<sup>th</sup> day of September, 2004.

  
\_\_\_\_\_



NULIB:186104.1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD  
Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

**AFFIDAVIT OF IDENTIFICATION AND MILITARY STATUS**

STATE OF MINNESOTA     )  
                                          ) ss.  
COUNTY OF BROWN     )

Michael S. Dove , being first duly sworn, states as follows:

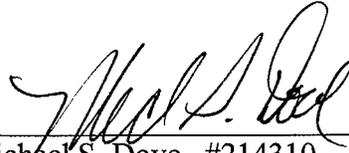
1. That he is an attorney for Plaintiff in this matter.
2. That upon information and belief, the full name and address of defaulting

defendant is as follows:

Kevin J. Smith  
10570 - 10<sup>th</sup> St. N.W.  
Annandale, MN 55302

3. That upon information and belief, the aforementioned defendant is not in the military, an infant or incompetent.

FURTHER YOUR AFFIANT SAYETH NOT.



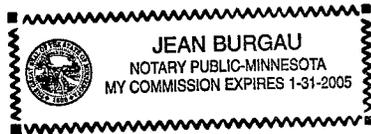
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Michael S. Dove #214310  
GISLASON & HUNTER LLP  
Attorneys for Plaintiff  
2700 South Broadway  
P. O. Box 458  
New Ulm, MN 56073-0458  
Phone: 507-354-3111

Subscribed and sworn to before me  
this 9<sup>th</sup> day of September, 2004.



NULIB:186103.1



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD  
Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

**AFFIDAVIT OF ATTORNEY'S FEES, COSTS AND EXPENSES**

STATE OF MINNESOTA     )  
                                          ) ss.  
COUNTY OF BROWN     )

1. Michael S. Dove, being first duly sworn, deposes and says that he is Michael S. Dove, one of the attorneys for the Plaintiff in the above-entitled action.

2. Plaintiff has incurred collection fees and expenses of \$1,306.58 for services provided by Gislason & Hunter LLP. These collection costs are recoverable under the promissory note that is the subject of the Complaint herein.

3. All services have been actually and necessarily incurred therein by and on behalf of said Plaintiff.

FURTHER YOUR AFFIANT SAYETH NOT.

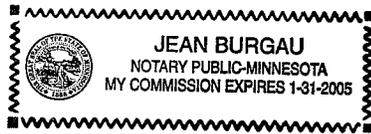


Michael S. Dove

Subscribed and sworn to before me  
this 9<sup>th</sup> day of September, 2004.



NULIB:153058.1



(FORM DD)

U. S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Kevin J. Smith

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

Debtor(s): Case Number BKY 04-42565-NCD  
ADV No. 04-4213

Kari Gleisner, employed by Gislason & Hunter LLP, attorney(s) licensed to practice law in this court, with office address of 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073, declares that on September 14, 2004, I served the annexed Notice of Hearing and Motion for Default Judgment; Application for Entry of Default Judgment; Affidavit of Default; Affidavit on the Merits and Amount Due; Affidavit of Identification and Military Status; Affidavit of Attorney's Fees, Costs and Expenses; and Proposed Findings of Fact, Conclusions of Law and Order for Judgment upon each of the entities named below by mailing to each of them a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing same in the post office at New Ulm, Minnesota, addressed to each of them as follows:

Mr. Kevin J. Smith  
10570 – 10<sup>th</sup> Street N.W.  
Annandale, MN 55302

Mr. Robert L. Kalenda  
Kalenda & Associates  
919 West St. Germain St.  
Suite 2000  
St. Cloud, MN 56301

Ms. Terri A. Georgen  
Bankruptcy Trustee  
P. O. Box 16355  
St. Paul, MN 55116

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

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

Executed: September 14, 2004

Signed: /e/ Kari Gleisner

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

In re:

Bky. No. 04-42565-NCD  
Adv. No. 04-4213

Kevin J. Smith,

Debtor.

Rabo AgServices, Inc.  
as servicer for  
Ag Acceptance Corporation,

Plaintiff,

vs.

Kevin J. Smith,

Defendant.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER FOR JUDGMENT**

This matter came before the Court upon the application of plaintiff, Rabo AgServices, Inc., formerly known as Ag Services of America, Inc., as servicer for Ag Acceptance Corporation (“Rabo”). There has been no appearance in this adversary proceeding by or on behalf of the defendant listed herein. Based upon the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. On May 5, 2004, Debtor Kevin J. Smith (“Smith”) filed a Petition seeking relief under Chapter 7 of the Bankruptcy Code.
2. Rabo commenced this adversary action by filing and serving a Summons and Complaint that was served via U.S. mail and certified mail upon Smith on August 2, 2004.
3. Pursuant to Bankruptcy Rule 7012, Smith had thirty (30) days in which to respond to Rabo’s Adversary Complaint.

4. Smith has failed to answer or otherwise defend in this adversary proceeding.

5. Smith's failure to answer within sufficient time, entitles Rabo to the entry of default judgment pursuant to Bankruptcy Rule 7055.

CONCLUSIONS OF LAW

1. Rabo is entitled to a judgment against Smith and in favor of Rabo in the amount \$23,653.61.

2. Rabo is entitled to a judgment against Smith and in favor of Rabo in the amount of \$1,306.58 for attorney's fees, costs and expenses.

WHEREFORE, IT IS HEREBY ORDERED:

1. That Rabo's application for a default judgment is granted.

2. That Judgment is entered against Smith and in favor of Rabo in the amount of \$23,653.61.

3. That Rabo is entitled to a judgment against Smith and in favor of Rabo in the amount of \$\_\_\_\_\_ for attorney's fees, costs and expenses.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BY THE COURT:

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Nancy C. Dreher  
United States Bankruptcy Court Judge