

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 04-40664

In re:

Mark Stanley Kasanowski,

Debtor.

**NOTICE OF HEARING AND MOTION
FOR TURNOVER OF PROPERTY**

TO: The Debtor above-named and her attorney,

1. Randall L. Seaver, the Chapter 7 Trustee herein, moves the Court for the relief request below and gives Notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 a.m. on October 27, 2004 Courtroom No. 7 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard. Under applicable rules, any objection must be in writing, be delivered to the Trustee and the United States Trustee, and be filed with the clerk, not later than October 22, 2004 which is 3 days before the above date (excluding Saturdays, Sundays and holidays) or filed and served by mail not later than October 18, 2004 which is 7 days before the time set for hearing (excluding Saturdays, Sundays and holidays) in accordance with Local Rules. **UNLESS A RESPONSE IS TIMELY SERVED AND FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. This Court has jurisdiction over this Motion under 28 U.S.C. §157 and §1334 and Bankruptcy Rule 5005. This Motion is filed under Local Rule 9013-2, this proceeding arises under 11 U.S.C. §542(a) and Local Rule 6072-1.

4. The petition commencing this Chapter 7 case was filed on February 11, 2004. The case is now pending in this Court.

5. The Debtor claimed a \$7,000 exemption in his claimed homestead located at 5437 31st Avenue South, legally described as Lot 19, Block 3, C.F.E. Peterson Company's Nokomis Park ("Property"). The Trustee objected to the claimed exemption to assure that the Property itself remained property of the bankruptcy estate and that the Debtor was only entitled to \$7,000 from the Trustee's liquidation of the Property. An order was entered by the Court sustaining that objection. A true and correct copy of the Order is attached hereto as Exhibit A.

6. On June 10, 2004, a sheriff's sale was held subject to a six month redemption period.

7. The Trustee retained John Radde to sell the real property at auction on or after September 25, 2004. A copy of the Application and Order are attached hereto as Exhibit B.

8. The Trustee corresponded with the Debtor and his attorney by letter dated July 29, 2004 regarding the retention of Mr. Radde and the contemplated sale. A true and correct copy of that correspondence is attached hereto as Exhibit C.

9. Mr. Radde met with Mr. Kasanowski on August 17, 2004. At that time, Mr. Radde and Mr. Kasanowski discussed the process and Mr. Kasanowski promised John Radde that he would be out of the premises by September 30, 2004. Mr. Kasanowski also indicated that he would "clean up" the property. Mr. Radde indicated that it was important that Mr. Kasanowski be out of the property by that time because Mr. Radde needed to set an inspection and an auction.

10. Mr. Radde subsequently advertised the auction setting an auction sale for October 23, 2004 and setting the inspection date of the premises for October 16, 2004. When Mr. Radde contacted the Debtor to obtain the key for the Property, the Debtor then told Mr. Radde that he intended to stay in the Property until December, 2004.

11. The Debtor has no ownership interest in the Property pursuant to this court's Order. The Debtor promised that he would turnover the Property but has now apparently changed his mind. The Property has been advertised for sale and the Trustee needs to proceed with the sale on the advertised dates. The Trustee seeks expedited relief so that the inspection and sale can proceed as scheduled by John Radde.

12. Mr. Radde met with Mr. Kasanowski and received a key to the home on October 6, 2004 and Mr. Kasanowski agreed to allow access to the property for a Minneapolis point of sale inspection. Mr. Kasanowski also agreed to vacate the property by Friday evening, October 15, 2004, and stated that he would have his property removed from the home by that date. Given Mr. Kasanowski's earlier change in position as to vacating the premises, the Trustee believes it necessary to seek a turnover order in the event Mr. Kasanowski does not vacate the premises as promised.

13. The Debtor, pursuant to this court's Order, is entitled to receive \$7,000 of equity in the homestead upon the sale of the homestead.

WHEREFORE, the Trustee requests an Order of the Court:

1. Ordering the Debtor to turnover the real property legally described as Lot 19, Block 3, C.F.E. Peterson Company's Nokomis Park not later than November 1, 2004 by vacating the premises by that time.

FULLER, SEAVER & RAMETTE, P.A.

Dated: October 13, 2004

By: /e/ Randall L. Seaver

Randall L. Seaver 152882
12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888

Attorneys for Randall L. Seaver, Trustee

VERIFICATION

I, Randall L. Seaver, Trustee for the Bankruptcy Estate of Mark Stanley Kasanowski 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 October 13, 2004

/e/ Randall L. Seaver

Randall L. Seaver, Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Mark Stanley Kasanowski,

Debtor.

BKY No. 04-40664

Chapter 7

ORDER

At Minneapolis, Minnesota this 21st day of April, 2004.

The above matter came before the court on the objection of the Chapter 7 Trustee to exemptions. Appearances were as noted upon the record.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The Debtor's claimed exemption of \$7,000.00 in equity in the Debtor's homestead, legally described as:

Lot 19, Block 3, C.F.E. Peterson Company's Nokomis Park, According to the plat thereof on file and of record for Hennepin County, Minnesota.

entitles the Debtor to \$7,000.00 equity in the homestead but the homestead itself and all equity in excess of \$7,000.00 remains property of the estate.

BY THE COURT:

/e/ Nancy C. Dreher

Nancy C. Dreher
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 04-40664
Chapter 7

Mark Stanley Kasanowski,

Debtor(s).

APPLICATION FOR APPROVAL OF EMPLOYMENT OF AUCTIONEER

1. Applicant is the Trustee in this case.
2. Applicant applies for approval of the employment of John J. Radde and Fred W. Radde & Sons, Inc., as an auctioneer to auction the following property of the estate: To sell at public auction real property of the estate located at 5437 31st Avenue South, Minneapolis, MN. The property is subject to a mortgage held by Ameriquest Mortgage Company. A foreclosure sale was held on June 10, 2004 at which time Ameriquest was the highest bidder at \$116,828.49. The Debtor has also claimed a \$7,000 exemption in the home. If the auction price is not sufficient to pay the mortgage and associated costs and the real estate commission with monies remaining for the estate, the sale will not be completed.
3. The terms and conditions of the compensation and reimbursement of expenses are as follows: The agent will receive commission of 7% to be paid at closing. John J. Radde has Licensed Minnesota Realtor #10884, since 1969; Minnesota Real Estate Broker's License #RA 440-958; Minnesota Auctioneer's License #10-02; Auctioneer's Bond #FB4574 from Contractors Insurance Bonding Company, dated from 04/01/2004 to 04/01/2005.
4. Said professional has disclosed to the undersigned that he has the following connections with the Debtor(s), creditors, and other party-in-interest, their respective attorneys and accountants, the United States Trustee or any person employed in the Office of the United States Trustee: None, except that he has provided services to the panel trustee in this case, and other panel trustees, in unrelated matters

WHEREFORE Applicant requests that the Bankruptcy Court approve such employment by the Trustee.

Dated: August 26, 2004

/e/ Randall L. Seaver
Randall L. Seaver, Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 04-40664
Chapter 7

Mark Stanley Kasimowski,

Debtor(s).

VERIFIED STATEMENT PURSUANT TO FEDERAL RULE 2014(a)

I, John J. Radde and Fred W. Radde & Sons, Inc., named in the application for employment on behalf of the above named bankruptcy estate, declare under penalty of perjury the following:

5. I do not hold or represent any interest adverse to the estate and am disinterested as required by 11 U.S.C. §327.

6. I do not have any connections to the Debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the offices of the United States Trustee, except for the following: None, except that I have provided services to the panel trustee in this case, and other panel trustees, in unrelated matters.

7. I have the appropriate bonding and insurance coverage: Licensed Minnesota Realtor #10884, since 1969; Minnesota Real Estate Broker's License #RA 440-958; Minnesota Auctioneer's License #10-02; Auctioneer's Bond #FB4574 from Contractors Insurance Bonding Company, dated from 04/01/2004 to 04/01/2005.

FRED W. RADDE & SONS, INC.

Dated: August ___, 2004

By: John J. Radde

John J. Radde
P.O. Box 397
Watertown, MN 55388
(952) 955-1587

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 04-40664
Chapter 7

Mark Stanley Kasanowski,

Debtor(s).

ORDER

On September 2, 2004 the Application to Employ John J. Radde and Fred W. Radde & Sons, Inc., as an auctioneer of the estate came before the undersigned. Based on the Application, the Recommendation of the United States Trustee, and pursuant to the provisions of Title 11, United States Code §327,

IT IS HEREBY ORDERED the professional employment applied for is hereby approved subject to the limitations on compensation provided by Title 11, United States Code §328.

Dated: September 2, 2004

/s/ Nancy C. Dreher

Nancy C. Dreher
U.S. Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 09/03/04 Lori A. Vosejпка, Acting Clerk, By KK
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e17-1

RANDALL L. SEAVER
UNITED STATES CHAPTER 7 PANEL TRUSTEE

PORTLAND CORPORATE CENTER
12400 PORTLAND AVENUE SOUTH, SUITE 132
BURNSVILLE, MN 55337

Telephone (952) 890-0888
Facsimile (952) 890-0244

July 29, 2004

Curtis K. Walker
Attorney at Law
4356 Nicollet Avenue South
Minneapolis, MN 55409

VIA FACSIMILE (612) 824-8005

Mark Stanley Kasanowski
5437 31st Avenue South
Minneapolis, MN 55417

RE: Mark Stanley Kasanowski
BKY No. 04-40664

Dear Messrs. Walker and Kasanowski:

As I indicated to Mr. Walker, I am retaining John Radde to sell the property located at 5437 31st Avenue South, Minneapolis, in which Mr. Kasanowski is currently residing.

At this point, it is contemplated that the property will be sold at auction. Mr. Radde needs to view the property before proceeding further. Mr. Radde will meet Mr. Kasanowski at the home 6:30 p.m. on August 17, 2004 for a viewing of the home and to discuss the process with Mr. Kasanowski. Mr. Kasanowski is to cooperate with Mr. Radde fully, as Mr. Radde will be an agent of the estate.

Very truly yours,

/s/ Randall L. Seaver

Randall L. Seaver
Trustee

RLS:klf

cc: John J. Radde

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY No. 04-40664

In re:

Mark Stanley Kasanowski,

AFFIDAVIT OF JOHN J. RADDE

Debtor.

STATE OF MINNESOTA)

) ss.

COUNTY OF DAKOTA)

John J. Radde, being first duly sworn, deposes and

states as follows:

1. I was hired by the Trustee to sell, at auction, the real property located at 5437 31st Avenue South, legally described as Lot 19, Block 3, C.F.E. Peterson Company's Nokomis Park ("Property").

2. On or about Aug. 17, 2004, 7 pm, 2004, I met with Mr. Kasanowski at the Property. Mr. Kasanowski at that time was cooperative. I explained the process of the sale by auction to him. Mr. Kasanowski promised me that he would clean up the Property and that he would be out of the Property by September 30, 2004. His moving out at that time, as I explained to him, was necessary because I needed to advertise the Property for sale and have an inspection prior to the auction sale.

3. I have advertised the Property for auction sale set for October 23, 2004. By at 11:00 a.m. the same advertisement, I have set the property for inspection on October 16, 2004.

4. When I contacted the Debtor on or about October 1, 2004, to obtain a key from from 11:00 a.m.-1:00 p.m. him and secure the Property, he indicated, for the first time, that he did not intend to move out

and that he was entitled to stay in the Property until December, 2004. The Debtor did provide me with a key on October 6, 2004. at approx. 8:00 p.m.

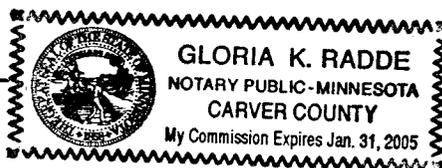
FURTHER YOUR AFFLIANT SAYETH NOT.

On Wed. October 6, 2004, at approx. 8:00 p.m., Mr. Kasanowski agreed to surrender a key to the front door. He agreed to allow access to property for Minneapolis point of sale inspection.

John J. Radde


Subscribed and sworn to before me this 7th day of October, 2004.


Notary Public



Other Notes:

Mr. Kasanowski agreed to vacate the property by Friday evening, October 15, 2004 and said he will have his personal property removed from the home by said date.

He further explained that he suffers from a medical condition known as manic depression, for which he takes medication.

Affidavit has nothing further to say.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 04-40664

In re:

Mark Stanley Kasanowski,

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Kari L. Fogarty declare under penalty of perjury that on October 13, 2004 I mailed a copy of the following documents:

1. Notice of Hearing and Motion for Turnover of Property and for Expedited Hearing;
2. Affidavit of John J. Radde; and
3. Order (proposed)

by first class mail, postage prepaid to the following entities:

Curtis K. Walker
Attorney at Law
4356 Nicollet Avenue South
Minneapolis, MN 55409

Mark Stanley Kasanowski
5437 31st Avenue South
Minneapolis, MN 55417

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

FULLER, SEAVER & RAMETTE, P.A.

Dated: October 13, 2004

By: /e/ Kari L. Fogarty
Kari L. Fogarty
Legal Secretary
12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 04-40664

In re:

Mark Stanely Kasanowski,

ORDER

Debtor.

This matter came on for hearing before this court on the motion of Randall L. Seaver, Chapter 7 Trustee, for turnover of property of the estate. Appearances, if any, were noted upon the record.

Upon the Motion of the Trustee, arguments of counsel, and the documents of record herein., and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The Debtor shall turnover the real property legally described as Lot 19, Block 3, C.F.E. Peterson Company's Nokomis Park not later than November 1, 2004, by vacating the premises by that time.

BY THE COURT:

Dated: _____, 2004

Nancy C. Dreher
U.S. Bankruptcy Judge