

MN - 150
(Revised 10/90)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7
Bky Case No. 04-41401-NCD

Patricia Mary Thill,

**VERIFIED NOTICE OF HEARING AND
MOTION OBJECTING TO CLAIMED
EXEMPT PROPERTY**

Debtor(s).

TO: The United States Bankruptcy Court, the United States Trustee, the debtors, the debtor's attorney, and all parties who requested notice under Bankruptcy Rule 2002:

1. John R. Stoebner, Trustee herein, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-5. This proceeding arises under 11 U.S.C. § 522 and Local Rule 4003-1(a).

3. The Court will hold a hearing on this objection on June 2, 2004, at 2:30 p.m. in Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.

4. Any entity opposing the motion under Local Rule 9013-2 is required to file and serve a response, including a memorandum of facts and law and any opposing affidavit, not later than May 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than May 21, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **If no response is timely served and filed, the Court may grant the relief requested without a hearing.**

5. The undersigned trustee hereby objects to the debtor's claim that the following property is exempt under the applicable exemption statute:

a. Homestead legally described as: Lot 5, Block 6, Shenandoah Meadows 2nd Addition, Anoka County, MN, claimed exempt to the extent of \$6,700.00 under 11 U.S.C. § 522 (d)(1).

b. IRA, claimed exempt to the extent of \$1,000.00 under 11 U.S.C. § 522 (d)(10)(E).

c. Life insurance Union American, claimed exempt to the extent of \$19,500.00 under 11 U.S.C. § 522 (d)(7).

d. Savings Bonds, claimed exempt to the extent of \$2,207.15 under 11 U.S.C. § 522 (d)(1).

6. The objection is made for the following reasons:

a. Upon information and belief, the value of the homestead exceeds \$237,500.00, less the outstanding Mortgage, leaving equity in excess of the claim of exemption of \$6,700.00. Based on the Anoka County property tax records, the current estimated market value for the property is \$237,500.00. Therefore, the claim of exemption should be limited to the amount available under 11 U.S.C. § 522 (d)(1), which is \$17,425.00.

b. Debtor claimed the IRA exempt pursuant to 11 U.S.C. § 522(d)(10)(E), in the amount of \$1,000.00. Upon information and belief, debtor has full access to and discretion over the withdrawal and the timing of any payments to her from the above-described account, subject only to a potential tax penalty upon withdrawal. Because the debtor's right to payment from her IRA is not on account of illness, disability, death, age, or length of service, the IRA is not a similar plan or contract pursuant to the statute and the IRA is not exempt under 11 U.S.C. § 522(d)(10)(E). See, *Rousey v. Jacoway (In re Rousey)*, 283 B.R. 265 (B.A.P. 8th Cir. 2002). Therefore, the exemption claim should be denied.

c. It is unclear from the debtor's schedules whether she is attempting to claim any portion of any cash or loan value in her life insurance policy as exempt. Upon information and belief, the loan or cash value of the debtor's life insurance exceeds the exemption claim of \$9,300.00 available for life insurance under 11 U.S.C. § 522 (d)(8). Accordingly, to the extent her claim of exemption in any loan or cash value in the Life Insurance Union American exceeds \$9,300.00, the exemption should be disallowed.

d. There is no claim of exemption available for savings bonds under 11 U.S.C. § 522 (d)(1).

Therefore, the exemption should be disallowed.

Dated: May 18, 2004

/e/ John R. Stuebner
John R. Stuebner, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

VERIFICATION

John R. Stuebner, being duly sworn, says that he is the Chapter 7 Trustee in this action, that he has read this Verified Notice and Objection To Claimed Exempt Property and that it is true of his own knowledge, to the best of his information.

/e/ John R. Stuebner
John R. Stuebner

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UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on May 18, 2004, I mailed copies of the attached **Trustee's Verified Notice of Hearing and Motion Objecting to Claimed Exempt Property and proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Patricia Mary Thill
13120 Lily Street
Coon Rapids, MN 55448

Joseph A. Wentzell, Esq.
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418

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

Ford Motor Credit Company
c/o Stewart, Zlimer & Jungers, Ltd.
Attn: Linda Jeanne Jungers, Esq.
430 Oak Grove Street, Suite 200
Minneapolis, MN 55403

Executed on: May 18, 2004

/e/ 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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DISTRICT OF MINNESOTA

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ORDER SUSTAINING OBJECTION TO CLAIM OF EXEMPTION

At Minneapolis, Minnesota, June 2, 2004.

The objection of the trustee to the debtor's claim that the following property is exempt under the listed statutes:

- a. Homestead legally described as: Lot 5, Block 6, Shenandoah Meadows 2nd Addition, Anoka County, MN, claimed exempt to the extent of \$6,700.00 under 11 U.S.C. § 522 (d)(1).
- b. IRA, claimed exempt to the extent of \$1,000.00 under 11 U.S.C. § 522 (d)(10)(E).
- c. Life insurance Union American, claimed exempt to the extent of \$19,500.00 under 11 U.S.C. § 522 (d)(7).
- d. Savings Bonds, claimed exempt to the extent of \$2,207.15 under 11 U.S.C. § 522 (d)(1).

came duly on for hearing on June 2, 2004. Appearances, if any, were as noted in the record.

Upon said objection and for cause shown, and upon all the files, records, and proceedings herein,

IT IS ORDERED,

1. To the extent the equity of the Homestead legally described as: Lot 5, Block 6, Shenandoah Meadows 2nd Addition, Anoka County, MN, exceeds \$17,425.00, the exemption is disallowed.
2. That the debtor's claims of exemption in the IRA and the Savings Bonds are disallowed.
3. To the extent the loan or cash value of the Life insurance Union American exceeds \$9,300.00, the exemption is disallowed.

Dated: _____, 2004

Nancy C. Dreher
United States Bankruptcy Judge