

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

Bankruptcy No. 04-42084-NCD  
Chapter 7 Case

Thomas Ziminske

Debtor.

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*NOTICE OF HEARING AND MOTION FOR DISMISSAL  
OF BANKRUPTCY PROCEEDINGS*

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TO: Debtor; Debtor's Attorney; United States Trustee; and All Other Parties in Interest.

1. Timothy D. Moratzka ("Trustee"), by and through his undersigned attorneys, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 a.m. on Wednesday, October 6, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 1, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE IS TIMELY FILED AND SERVED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion, or this motion is authorized under 28 U.S.C. Sec. 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing the Chapter 7 case was filed on April 14, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. Sec. 305, 1017(d) and 9014, and Local Rule 1017-2(a) and Trustee requests dismissal of the bankruptcy proceedings filed by Debtor.

6. The first meeting of creditors was scheduled for May 11, 2004. Debtor failed to appear at the first meeting of creditors.

7. The first meeting of creditors was rescheduled for June 17, 2004. Debtor failed to appear at the rescheduled first meeting of creditors.

8. The first meeting of creditors was rescheduled for June 29, 2004.

9.. An order deferring discharge was entered on May 18, 2004.

WHEREFORE, Trustee moves the Court for an order dismissing the Chapter 7 proceedings of Debtor, vacating any discharge, if granted.

Dated: September 13, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE, PLC

By/e/Timothy D. Moratzka  
Timothy D. Moratzka (#75036)  
Attorneys for Trustee  
1400 AT&T Tower  
901 Marquette Avenue  
Minneapolis, Minnesota 55402  
(612) 305-1400

VERIFICATION

Timothy D. Moratzka declares under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: September 13, 2004.

Signed: /e/Timothy D. Moratzka  
Timothy D. Moratzka

UNITED STATES BANKRUPTCY COURT  
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**INTRODUCTION**

Timothy D. Moratzka ("Trustee") submits this memorandum in support of his motion to dismiss this Chapter 7 case.

**FACTS**

The first meeting of creditors was scheduled for May 11, 2004. Debtor failed to appear at the first meeting of creditors.

The first meeting of creditors was rescheduled for June 17, 2004. Debtor failed to appear at the rescheduled first meeting of creditors.

The first meeting of creditors was rescheduled for June 29, 2004.

**ARGUMENT**

This motion is brought under the authority contained in Local Rules 1017-2(a) and 7041-1 and Federal Rules of Bankruptcy Procedure 1017 and 9014 with due notice having been given.

A meeting of creditors is to be convened by Trustee. 11 U.S.C. § 341(a). Debtor has the duty of submitting to an examination under oath at the meeting of creditors under Section 341(a). 11 U.S.C.

§ 343. Debtor has failed to fulfill this duty by the uncontroverted evidence before the Court.

Trustee may request the dismissal of the case for cause, including an unreasonable delay by Debtor that is prejudicial to creditors. 11 U.S.C. § 701(a)(1). Debtor's failure to appear at the first meeting of creditors is an unreasonable delay. Moreover, creditors are prejudiced by not being able to examine Debtor under oath. Consequently, dismissal of this case is appropriate.

Moreover, if any discharge has been entered prior to the hearing on the Motion, such discharge should be vacated pursuant to 11 U.S.C. § 727.

### **CONCLUSION**

For all the reasons set forth herein, Trustee respectfully respects the Court to dismiss this case and vacate any discharge granted.

DATED: September 13, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE, PLC

By: /e/Timothy D. Moratzka  
Timothy D. Moratzka (#75036)  
Attorneys for Trustee  
1400 AT&T Tower  
901 Marquette Avenue  
Minneapolis, Minnesota 55402  
(612) 305-1400

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**UNSWORN DECLARATION OF TIMOTHY D. MORATZKA**

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Timothy D. Moratzka (“Trustee”), hereby states as follows:

1. I am the duly appointed trustee in the above captioned proceeding.
2. The first meeting of creditors was scheduled for May 11, 2004. Debtor failed to appear at the first meeting of creditors.
3. The first meeting of creditors was rescheduled for June 17, 2004. Debtor failed to appear at the rescheduled first meeting of creditors.
4. The first meeting of creditors was rescheduled for June 29, 2004.
5. The meeting of creditors has not been concluded.
6. An order deferring discharge was entered on May 18, 2004.
7. Trustee requests that the discharge of the Debtor not be entered until after the hearing on the Trustee's Notice of Motion and Motion for Dismissal of Bankruptcy Proceedings.

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

Dated: September 13, 2004

/e/Timothy D. Moratzka  
Timothy D. Moratzka, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

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Debtor.

Bankruptcy No. 04-42084-NCD  
Chapter 7 Case

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

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Amy J.Ditty, employed by Mackall, Crouse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Dismissal of Bankruptcy Proceedings, Memorandum in Support, Affidavit of Timothy D. Moratzka, and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Thomas Ziminske  
7725 Dupont Avenue No.  
Brooklyn Park, MN 55444

Joseph Kelly  
12400 Portland Avenue  
Suite 120  
Burnsville, MN 55337

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.

Dated: September 13, 2004

By /e/ Amy J. Ditty

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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***ORDER***

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The above-entitled matter came on for hearing on October 6, 2004, pursuant to a Notice of Hearing on Motion to Dismiss Case filed by Timothy D. Moratzka, Trustee. Appearances were noted in the Court's record.

Based upon the files, records and proceedings herein,

IT IS HEREBY ORDERED,

1. The above captioned bankruptcy proceeding is hereby dismissed pursuant to 11 U.S.C. §707.

2. The discharge, if any, of Debtor is hereby vacated pursuant to 11 U.S.C. §727; and Clerk is directed to appropriately notice all creditors and interested parties.

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

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

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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Debtor.

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*NOTICE OF HEARING ON MOTION TO DISMISS CASE*

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TO: All creditors and other parties in interest.

Timothy D. Moratzka, Trustee herein has filed a motion, to dismiss this case.

On Wednesday, October 6, 2004, at 10:30 a.m. in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, the Court will hold a hearing to determine whether this case should be dismissed.

Any response to this motion must be filed and delivered not later than October 1, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE IS TIMELY FILED AND SERVED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

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

\_\_\_\_\_  
Clerk of Bankruptcy Court

By \_\_\_\_\_  
Deputy Clerk