

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Case No. 04-42279

Timothy Zelazny,

**NOTICE OF MOTION AND MOTION TO
AVOID LIEN AND IMPOSE SANCTIONS
FOR VIOLATION OF THE AUTOMATIC
STAY AND DISCHARGE INJUNCTION**

Debtor.

Chapter 7 Case

To: All parties in interest:

1. Debtor Timothy Zelazny moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this Motion on October 27, 2004 at 10:30 AM in Courtroom 7W, 300 South Fourth Street, Minneapolis, Minnesota 55104 or as soon thereafter as counsel may be heard.
3. Any response to this motion must be filed and served not later than October 18, which is seven days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT HEARING.**
4. This court has jurisdiction under 28 U.S.C. § § Bankr. P. 4003(d), 9014, 11 U.S.C. § 363, Fed. R. Bankr. P. 6004, 2002, and Local Rules 2002 and 6004-1.
5. This motion arises under Fed. R. Bankr. P. 4003(d), 9014, 11 U.S.C. §§ 547(c), 522(g) and (h) and 11 U.S.C. § 362 (a) and (h). This case was commenced April 22, 2004 and is still pending in this court.
6. Debtor requests an order avoiding the judgment lien of Pioneer Financial as successor in interest to Providian (Pioneer) in exempt bank account funds of the Debtor and awarding attorney's fees against Pioneer and its counsel Messerli and Kramer (Messerli) for willful violation of the automatic stay under 11 U.S.C. § 362(h).
7. Providian obtained a judgment against Debtor and on or about April 12, 2004 served a levy on Debtor's bank account on Wells Fargo. Approximately \$2,771.07 was held by Wells Fargo pursuant to the judgment levy.

8. Debtor filed for protection under Chapter 7 of the Bankruptcy Code on April 22, 2004. On that same day, a facsimile was sent to both Wells Fargo and Messerli & Kramer with notice of the case filing.
9. On April 27, Debtor's counsel sent another facsimile to Messerli requesting that a release be sent to Wells Fargo releasing the funds still held pursuant to the levy.
10. On May 20, Debtor's counsel again sent a facsimile to Messerli requesting a release be sent to Wells Fargo stating that the levied funds were to be returned to the Debtor. This fax detailed the deficiency with a previous release sent to Wells Fargo, which stated that any funds taken from the bank account after the date of filing should be returned to the Debtor.
11. Many subsequent telephone calls to Messerli yielded no correction to the release sent to Wells Fargo. Messerli & Kramer employees refused to change the language of what they called their "standard release", even though Debtor's counsel made it clear both verbally and in writing that this language would not effect the release of the funds.
12. Messerli & Kramer's steadfast refusal to comply with the Debtor's request for a release sufficient to release the funds held by Wells Fargo has caused and continues to cause economic hardship upon the Debtor.

WHEREFORE, Debtor asks that the Court issue an order avoiding the judicial lien of Pioneer and enter a judgment in Debtor's favor for \$2,771.07 plus reasonable attorney's fees.

Dated: 9/22/04

HOGLUND, CHWIALKOWSKI, GREEMAN & BERGMANIS P.L.L.C.

/e/ Marie F. Martin

Marie F. Martin #287040

Attorney for Debtor

1611 W. County Road B, Suite 106

P.O. Box 130938

Roseville, MN 55113

(651) 628-9929



**United States Bankruptcy Court
District of Minnesota**



Notice of Electronic Filing ('NEF') for Case: 4-42279

Notice of partial case completion for document:

Document Submitted by: **Robert Hoglund A037**
Email Address: **dkarle@mn-legalservices.com**
Date/Time: **Tue May 4 12:21:47 2004**
Judge: **DREHER** Trustee: **GEORGEN, TERRI A**
Chapter: **7**

Debtor Name(s): ZELAZNY, TIMOTHY G;
Docket entry 6-1 was made as follows:
Schedules

[View image file submitted with above document](#)

Signature Declaration 7-1 was made as follows:
Declaration of Original Signature Re: [6-1] Electronic Schedules .

[View Signature Declaration Page](#)

There were 22 creditor records added

Docket entry 8-1 was made as follows:
Amended creditor list supplied by Debtor.

[View image file submitted with above document](#)

[Submit Another Document for this case](#)

[End Session/Home Page](#)

[View Docket](#)

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : APR-22-04 04:51PM
TEL NUMBER: 6516289377
NAME : Høglund, Chwialkowski, & Greeman

FILE NUMBER : 479
DATE : APR-22 04:34PM
TO : 7635487922
DOCUMENT PAGES : 002
START TIME : APR-22 04:34PM
END TIME : APR-22 04:50PM
SENT PAGES : 002
STATUS : OK

FILE NUMBER : 479

*** SUCCESSFUL TX NOTICE ***

HOGLUND, CHWIALKOWSKI, GREEMAN & BERGMANIS

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JEREMY J. BURSSELL

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ALSO MEMBER WISCONSIN BAR
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TELEPHONE: (651) 628-9929
FAX: (651) 628-9377

TELECOMMUNICATIONS COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGES TO:

COMPANY: Messerli & Kramer ATTN: _____
FAX NUMBER: 763-548-7922
FROM: Jay Meyer PHONE: 651-628-9929
TOTAL NUMBER OF PAGES 2 INCLUDES COVER PAGE
DATE: April 22, 2004

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.

CLIENT NAME: Zelazny, Tim

NOTES: Release Bank Levy

*** VIA FAX ONLY ***

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EX 2

HOGLUND, CHWIALKOWSKI, GREEMAN & BERGMANIS

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JAMES G. GREEMAN
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JENNIFER G. MROZIK
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COMPANY: Messerli & Kramer

ATTN: _____

FAX NUMBER: 763-548-7922

FROM: Jay Meyer

PHONE: 651-628-9929

TOTAL NUMBER OF PAGES 2

INCLUDES COVER PAGE

DATE: April 22, 2004

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CLIENT NAME: Zelazny, Tim

NOTES: Release Bank Levy

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EX2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Tim Zelazny
SSN: 473-98-3857

Case Number: 04-42279
Chapter 7 Case
Notice of Case Filing

Debtor(s).

To: Messerli & Kramer

RELEASE BANK LEVY

You are hereby notified that the petition commencing this case under Chapter 7 of Title II of the United States Code was filed by the debtor(s) named above on April 22, 2004, with the clerk of the U.S. Bankruptcy Court at Minneapolis, Minnesota. The commencement of this case constitutes an order for relief under U.S.C. 301 or 302. The filing of this petition operates as a stay of certain acts and proceedings under 11 U.S.C. 362. 11 U.S.C. 362 requires that all garnishments and/or levies cease immediately upon receipt of notice, actual or otherwise, of a bankruptcy petition filing. The continuation of a garnishment and/or levy after receipt of notice may subject the offending party to sanctions pursuant to 11 U.S.C. 362. Please contact your legal department for further clarification if necessary.

Dated: 4/22/2004

/s/ Robert J. Hoglund

Attorney for Debtor(s)

Robert J. Hoglund #210997
Attorney at Law
P.O. Box 130938
1611 West County Road B #106
Roseville, Minnesota 55113
(651) 628-9929

Ex 2

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : APR-27-04 04:47PM
TEL NUMBER: 6516289377
NAME : Hoglund, Chwialkowski, & Greeman

FILE NUMBER : 619
DATE : APR-27 04:31PM
TO : 7635487922
DOCUMENT PAGES : 002
START TIME : APR-27 04:46PM
END TIME : APR-27 04:47PM
SENT PAGES : 002
STATUS : OK

FILE NUMBER : 619

*** SUCCESSFUL TX NOTICE ***

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PLEASE DELIVER THE FOLLOWING PAGES TO:

COMPANY: Messerli & Kramer ATTN: _____
FAX NUMBER: 763-548-7922
FROM: Jay Meyer PHONE: 651-628-9929
TOTAL NUMBER OF PAGES 2 INCLUDES COVER PAGE
DATE: April 27, 2004

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CLIENT NAME: Zelazny, Tim

NOTES: Release Levied Funds

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FROM: Jay Meyer PHONE: 651-628-9929

TOTAL NUMBER OF PAGES 2 INCLUDES COVER PAGE

DATE: April 27, 2004

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CLIENT NAME: Zelazny, Tim

NOTES: Release Levied Funds

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MEREDITH CARLSON
MATTHEW M. WEBER
TRACY CHIZEK
LINDA McGOVERN
ERIN FIGUERA
MARY DELVIN
SARAH STONEBURG
SCOTT HEBBAUS

April 27, 2004

Re: Tim Zelazny
Bankruptcy Case No: 04-42279

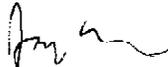
Dear Messerli & Kramer:

Our client, Tim Zelazny, filed a voluntary petition in Bankruptcy in the Fourth Division of the District of Minnesota on April 22, 2004. Mr. Zelazny's bankruptcy petition schedules duly and properly list your client as an unsecured creditor. Within 90 days prior to the date of filing, \$2,771.07 was taken from Mr. Zelazny's Wells Fargo Bank account pursuant to execution by your client. Pursuant to 11 U.S.C. § 522(f), (g), (h), and (i) and 11 U.S.C. § 547(b), we demand that you return the monies taken from Mr. Zelazny.

Please send a release of the levy to Wells Fargo Bank.

Please advise me of your client's intentions within the next 5 days.

Sincerely,



Jay Meyer
Law Clerk for
Attorney Marie Martin

EX 3

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : MAY-27-04 10:30AM
TEL NUMBER: 6516289377
NAME : Hoglund, Chwialkowski, & Greeman

FILE NUMBER : 936
DATE : MAY-27 10:29AM
TO : 7635487922
DOCUMENT PAGES : 001
START TIME : MAY-27 10:29AM
END TIME : MAY-27 10:30AM
SENT PAGES : 001
STATUS : OK

FILE NUMBER : 936 *** SUCCESSFUL TX NOTICE ***

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JAMES H. GREEMAN
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JENNIFER O. MROZIK
MARIE P. MARTIN
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PATRICK TOOMEY
*ALSO MEMBER WISCONSIN BAR
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FAX: (651) 628-9377

PARALEGALS
ROBIN NORI
MEREDITH CARLSON
MARY DELVIN
KARIANN CLAFLIN

TELECOMMUNICATION COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Leon

FAX NUMBER: (763) 548-7922 PHONE: ()

FROM: Attorney Marie Martin PHONE: (651) 628-9329

DATE: 5/27/04

TOTAL PAGES/INCLUDES COVER PAGE: _____
IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL BACK IMMEDIATELY.

REGARDING: Tim Zelazny

I have explained to you numerous times that the standard release your office sends is insufficient for Wells Fargo to return the funds levied prior to filing. Further delay in returning the funds is unnecessary. Modify your standard release as the fax from Jay is my office requested today in order to resolve this matter without further litigation and expense to either of our clients. Call when you receive my voice message and fax Marie Martin

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JENNIFER G. MROZIK
MARIE F. MARTIN
CHRISTOPHER A. JOHNSTON
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PATRICK TOOMEY**

*ALSO MEMBER WISCONSIN BAR
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ROSEVILLE, MINNESOTA 55113

TELEPHONE: (651) 628-9929
FAX: (651) 628-9377

PARALEGALS
ROBIN NORI
MEREDITH CARLSON
MARY DELVIN
KARIANN CLAFLIN

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PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Leon

FAX NUMBER: (763) 548-7922 PHONE: ()

FROM: Attorney Marie Martin PHONE: (651) 628-9929

DATE: 5/27/04

TOTAL PAGES/INCLUDES COVER PAGE:

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REGARDING: Tim Zelazny

I have explained to you numerous times that the "standard" release your office sends is insufficient for Wells Fargo to return the funds levied prior to Siling. Further delay in returning the funds is unnecessary. Modify your standard release as the fax from Jay in my office requested today in order to resolve this matter without further litigation and expense to either of our clients. Call when you receive my voice message and fax.
Marie Martin

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Ex 4

FROM MESSERLI & KRAMER PA

(FRI) 5. 21' 04 14:17/ST. 14:03/NO. 4260791691 P 2

Messerli
&
Kramer

professional association

ATTORNEYS AT LAW

3033 CAMPUS DRIVE
SUITE 250
PLYMOUTH, MINNESOTA 55441

TELEPHONE (763) 548-7900

FACSIMILE (763) 548-7922

TOLL FREE 1-800-795-4201

AUTHORIZED TO PRACTICE LAW IN
MINNESOTA, WISCONSIN, IOWA,
SOUTH DAKOTA, COLORADO,
MONTANA, NEW YORK
AND WASHINGTON, D.C.

WATER'S DIRECT DIAL NUMBER

May 12, 2004

Wells-Fargo
Legal Order Processing
PO Box 29779
Phoenix, AZ 85038

RE: Pioneer Financial, LLC vs. Timothy G Zelazny
Social Security Number: 473-98-3857
Our File No.: 02-39426-0

Dear Sir or Madam:

On April 12, 2004, I served upon you by certified mail a Third Party Levy relative to the above-captioned matter.

Please be advised that a bankruptcy petition was filed by the above-named individual(s) on April 22, 2004. I would request that you release any funds withheld on or after April 22, 2004 to the above-named individual(s).

Should you have any questions or comments, please advise.

Very truly yours,

Jefferson C. Dennis
Derrick N. Weber

BBR/02-39426-0

IMPORTANT NOTICE

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

EX 5

FROM MESSERLI & KRAMER PA

(FRI) 5. 28' 04 11:48/ST. 11:47/NO. 4260791822 P 1

**Messerli
&
Kramer**

professional association

ATTORNEYS AT LAW

3033 CAMPUS DRIVE

SUITE 250

PLYMOUTH, MINNESOTA 55441

TELEPHONE (763) 548-7900

FACSIMILE (763) 548-7922

TOLL FREE 1-800-795-4205

AUTHORIZED TO PRACTICE LAW IN

MINNESOTA, WISCONSIN, IOWA,

SOUTH DAKOTA, COLORADO,

MONTANA, NEW YORK

AND WASHINGTON, D.C.

OFFICE'S DIRECT DIAL NUMBER

763-548-7942

May 28, 2004

Marie F. Martin, Esq.
1611 West County Road B, Suite 106
Post Office Box 130938
Roseville, Minnesota 55113

VIA FACSIMILE ONLY TO:
651-628-9377

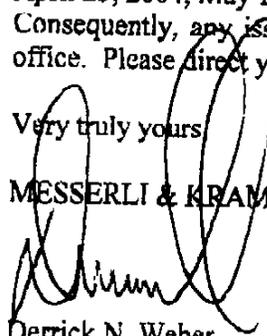
Re: *Pioneer Financia, LLCI vs. Timothy G. Zelazny*
Bankruptcy Court File No.: 04-42279
Our File No.: 02-39426

Dear Ms. Martin:

I am in receipt of your facsimile of May 27, 2004. In response to same, please be advised that we have transmitted a release to Wells Fargo via facsimile no less than three separate times: April 23, 2004, May 12, 2004, and May 14, 2004 (at which time we also faxed a copy to your office). Consequently, any issue your client may have regarding your client's bank, does not concern our office. Please direct your communications accordingly.

Very truly yours,

MESSERLI & KRAMER P.A.


Derrick N. Weber
Attorney at Law

515819_1

EX 6

IMPORTANT NOTICE

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : JUN-02-04 12:20PM
TEL NUMBER: 6516289377
NAME : Høglund, Chwialkowski, & Greeman

FILE NUMBER : 058
DATE : JUN-02 12:19PM
TO : 7635487922
DOCUMENT PAGES : 001
START TIME : JUN-02 12:19PM
END TIME : JUN-02 12:20PM
SENT PAGES : 001
STATUS : OK

FILE NUMBER : 058 *** SUCCESSFUL TX NOTICE ***

HøGLUND, CHWIALKOWSKI, GREEMAN & BERGMANIS

ATTORNEYS AT LAW
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KEITH CHWIALKOWSKI
JAMES H. GREEMAN
ERIC M. BERGMANIS
JENNIFER G. MROZIK
MARIE P. MARTIN
CHRISTOPHER A. JOHNSTON
JEFFREY J. BURSSELL
PATRICK TOOMEY**

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PARALEGALS
ROBIN NORI
MEREDITH CARLSON
MARY DELVIN
KARIANN CLAFLIN

**ALSO MEMBER WISCONSIN BAR
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PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Derrick Weber
FAX NUMBER: (763) 548-7920 PHONE: (763) 548-7900
FROM: Marie Martin PHONE: (651) 628-9929
DATE: 6/2/04

TOTAL PAGES/INCLUDES COVER PAGE:
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REGARDING: Timothy Zelazny

I have just spoken with Chere at Wells Fargo. She stated that Marcy at your firm (A) would not send a release that meets Wells Fargo's requirements to release the funds held pursuant to the prepetition levy; and (B) would not give Chere verbal confirmation that the intent of the two (not three) releases Wells Fargo has received was to give the debtor the funds back. Contrary to your recent fax, my obstacle to resolving this matter without further costly and useless litigation is your office. Send a conforming release without further delay. Marie Martin

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EX 7

HOGLUND, CHWIALKOWSKI, GREEMAN & BERGMANIS

ATTORNEYS AT LAW

ROBERT J. HOGLUND
KEITH CHWIALKOWSKI*
JAMES H. GREEMAN
ERIK M. BERGMANIS
JENNIFER G. MROZIK
MARIE F. MARTIN
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JEFFREY I. BURSILL
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*ALSO MEMBER WISCONSIN BAR
**LICENSED IN NEW YORK

ATTORNEYS AT LAW
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1611 WEST COUNTY ROAD B, SUITE 106
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ROSEVILLE, MINNESOTA 55113

TELEPHONE: (651) 628-9929
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PARALEGALS
ROBIN NORI
MEREDITH CARLSON
MARY DELVIN
KARIANN CLAFLIN

TELECOMMUNICATION COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME: Derrick Weber

FAX NUMBER: 763 548-7922 PHONE: 763 548-7900

FROM: Marie Martin PHONE: (651) 628-9929

DATE: 6/2/04

TOTAL PAGES/INCLUDES COVER PAGE:

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REGARDING: Timothy Zelazny

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Ex 7

**Messerli
&**

Kramer
professional association

FAX COVER SHEET

Attorneys at Law
3033 Campus Drive, Suite 250
Plymouth, MN 55441
Telephone: (763) 548-7900
Fax: (763) 548-7922

MARCI QUINER

| | | | |
|--------------|--------------|--------------------------------------|---|
| DATE: | June 3, 2004 | PAGES (INCLUDING COVER PAGE): | 2 |
|--------------|--------------|--------------------------------------|---|

TO: Marie Martin, Esq.

COMPANY:

FAX: 651-628-9377

PHONE NO.:

CC: Messerli & Kramer PA

FIRM:

FAX: 763-548-7922

MAIN No.:

FROM: Derrick N. Weber
Attorney at Law

DIRECT 763-548-7976
DIAL No.:

RE: -Timothy Zelazny

COMMENTS:

IF YOU HAVE ANY QUESTIONS OR COMMENTS, PLEASE DO NOT HESITATE TO CONTACT ME.

If you do not receive all pages, or are experiencing other problems in transmission, please call Marci at 548-7976. Thank you.

ATTENTION:

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Ex 8

Messerli
 &
Kramer

professional association

ATTORNEYS AT LAW

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 SOUTH DAKOTA, COLORADO,
 MONTANA, NEW YORK
 AND WASHINGTON, D.C.

WRITER'S DIRECT DIAL NUMBER

June 3, 2004

Hoglund, Chwialkowski, Greeman & Bergmanis
 Attn: Marie Martin
 P.O. Box 130938
 Roseville, MN 55113

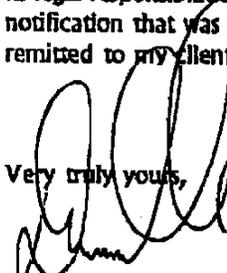
RE: Pioneer Financial, LLC as successor in interest to Provident Bank vs. Timothy Zelazny
 Our File Number: 02-39426-0

Dear Ms. Martin:

I am sending you this letter in response to your fax dated June 2, 2004 regarding the above-referenced matter.

Please be advised that his office does not represent Wells Fargo Bank in this matter and cannot advise it regarding its legal responsibilities. We have sent the required release no less than three (3) times. If you had read the bankruptcy notification that was sent to Wells Fargo, you should have noticed that we did not request the pre-petition funds to be remitted to my client. This office will not respond further to anymore requests for releases in this matter.

Very truly yours,


 Derrick N. Weber
 Attorney at Law

QAA/02-39426-0

IMPORTANT NOTICE

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Ex 8

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Case No. 04-42279

Timothy Zelazny,

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO AVOID LIEN AND
IMPOSE SANCTIONS FOR VIOLATION
OF THE AUTOMATIC STAY AND
DISCHARGE INJUNCTION**

Debtor.

Chapter 7 Case

I. This lien is avoidable under the Bankruptcy Code.

A lien that impairs an exemption is avoidable under the Bankruptcy Code.

Notwithstanding any waiver of exemptions, but subject to paragraph (3), the debtor may avoid the fixing of a lien on any interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under Section (b) of this Section, if such lien is –

(A) a judicial lien other than a judicial lien that secures a debt-;

(B) a non-possessory, non-purchase money security interest in any –

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

11 U.S.C. § 522 (f) (2004).

A judicial lien is a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.,C. § 101(36) (2004).

Pioneer's judgment was obtained in Wright County District Court. This judgment would impair the Debtor's exemptions. Therefore, the Court can avoid this lien.

II. Debtor may avoid this transfer as a preferential transfer.

Preferential transfers are avoidable by the debtor.

The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if

- (1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 533 of this title; and
- (2) the trustee does not attempt to avoid such transfer.

11 USC ¶ 522(d) (2004).

Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest in property of the debtor in property-

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made-
 - (A) on or within 90 days before the date of the filing of the petition; or
 - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of the transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if-
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 USC ¶ 547 (2004).

This transfer meets all the requirements of a preferential transfer and is therefore avoidable by the debtor.

III. Pioneer has willfully violated the automatic stay and discharge provisions of the Bankruptcy Code.

The automatic stay is one of the fundamental rights afforded the debtor in bankruptcy. The automatic stay provides a bankruptcy debtor with a “breathing spell from his creditors in which he may attempt a repayment or reorganization plan” Farley v. Henson, 2 F.3d 273, 274 (8th Cir. 1993). The filing of a bankruptcy petition operates as a stay, applicable to all entities, of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. 11 U.S.C. § 362 (a)(3) (2004). Thus, where a creditor seizes of a debtor after the debtor has filed a bankruptcy petition, the automatic stay has clearly been violated. *See* Knaus v. Concordia Lumber Co. (In re Knaus), 889 F.2d 773, 775 (8th Cir. 1989); SBA v. Rinehart, 887 F.2d 165, 167-8 (8th Cir. 1989). A creditor’s failure to fulfill his duties of turnover constitutes an attempt to “exercise control over the property of the estate” and is itself a violation of the automatic stay. Knaus, 889 F.2d at 775. An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney’s fees, and, in appropriate circumstances, may recover punitive damages. 11 U.S.C. § 362(h). To determine whether a stay violation was willful the court must undertake a two-pronged inquiry. First, the court must determine that the individual seeking damages was indeed injured by the stay violation. Second, the Court must determine that the violation was willful. Lovett v. Honeywell, 930 F.2d 625,628 (8th Cir. 1991) (citing H.T. Bowling, Inc. v. Bain (In re Bain), 64 B.R. 581, 584 (W.D. Va. 1986)). “[t]he Eighth Circuit has held that the willfulness requirement of this statute is

satisfied when the creditor 'acts deliberately with knowledge of the bankruptcy petition'.

Atkins v. Martinez (In re Atkins), 176 B.R. 998 1008 (Bankr. D. Minn. 1994).

Pioneer sent a purported release that did not state release the funds to the Debtor in a clear enough manner for Wells Fargo. Wells Fargo and Debtor's counsel made it unequivocally clear what language needed to be provided by Pioneer and Pioneer's counsel refused outright to state it. Clearly, the automatic stay was willfully violated. Debtor was deprived of the use of his funds to pay his living expenses and has suffered greatly because of it.

Based on the foregoing analysis, Debtor is entitled to both actual and punitive damages as well as attorney's fees for the willful and ongoing violation of the automatic stay by Pioneer.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Timothy Zelazny,

Chapter 7 Case
Bkry Case No: 04-42279

**UNSWORN CERTIFICATE
OF SERVICE**

Debtor(s).

I, Lauren Behm, employed by Hoglund, Chwialkowski, Greeman & Bergmanis, P.L.L.C., attorneys licensed to practice law in this Court, with office address of 1611 West County Road B, Suite 106, Roseville, Minnesota 55113, declare that on September 23, 2004, I served the Notice of Motion and Motion to Avoid Lien and Impose Sanctions for Violation of the Automatic Stay and Discharge Injunction, Exhibits and Memorandum of Law, 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 the same in the post office in Roseville, Minnesota, addressed to each of the entities as follows:

Ms. Terri A. Georgen-Running
Trustee in Bankruptcy
P.O. Box 16355
Saint Paul, Minnesota 55116

United States Trustee
1015 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

Timothy Zelazny
410 - 2nd Avenue NW
Buffalo, Minnesota 55313

Pioneer Financial
c/o Messerli & Kramer, P.A.
Derrick N. Weber
Attorney At Law
3033 Campus Drive, Suite 250
Plymouth, Minnesota 55441

Providian Bank
P.O. Box 660548
Dallas, Texas 75266

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

Dated: September 23, 2004

Signed: /e/ Lauren Behm
Paralegal