

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

Bky No. 04-42501

-----  
In re:

Cindee V. Harvey

Debtor.

**NOTICE OF HEARING AND  
MOTION OBJECTING TO  
CLAIMED EXEMPTIONS  
AND FOR TURNOVER**

-----  
TO: The Debtor and other entities specified in Local Rule 9013-3.

1. Randall L. Seaver, the duly appointed Chapter 7 trustee herein ("Trustee") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on October 20, 2004, in Courtroom 8 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN 55415.

3. Any response to this motion must be filed and delivered not later than October 13, 2004 which is seven days before the time set for the hearing or filed and served by mail not later than October 8, 2004 which is ten days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This Chapter 7 case was commenced on May 3, 2004. The first meeting of creditors was originally scheduled for June 1, 2004. On or about August 16, 2004, the Debtor filed an Amended Schedule C. A true and correct copy of that Amended Schedule C is attached hereto as Exhibit A.

5. This motion arises under 11 U.S.C. §522, Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 and 9013-2.

6. Objection is made to the Debtor's claimed exemption of "cash from wages" in the amount of \$975. Objection to this claimed exemption is made because the Debtor's \$1,300 in cash was intentionally concealed from the Trustee. The Debtor's original Schedule B, a copy of which is attached hereto as Exhibit B, indicates that she had no cash on hand at the time of filing. The Trustee's investigation of the Debtor's financial records indicated that in the several days prior to commencement of the bankruptcy filing, and including the day of filing, the Debtor withdrew \$1,400 in cash from ATM machines. A true and correct copy of that account statement is attached hereto as Exhibit C. The statement also indicated that she deposited \$380 into her account four days after her bankruptcy was filed.

7. Objection is also made because there is no statutory basis under Minn. Stat. §§571.92(2) or 550.37 subd. 13 for an exemption of cash.

8. The Trustee the made inquiry of the Debtor at the §341 meeting about the apparent cash withdrawals, the Debtor indicated that monies may have been paid to a friend, Susan Olson. See Exhibit E.

9. After the meeting of creditors, the Debtor, through her attorney, corresponded with the Trustee stating that the \$1,300 had been used to "hold off the foreclosure of the debtor's homestead." A true and correct copy of that correspondence and enclosure are attached hereto as Exhibit E.

10. On July 22, 2004, the Trustee made demands of the Debtor to turnover monies to the Trustee. A true and correct copy of that correspondence is attached hereto as Exhibit F.

11. Attached hereto as Exhibit G is a true and correct copy of July 30, 2004 correspondence from the Debtor's attorney.

12. Attached hereto as Exhibit H is a true and correct copy of August 9, 2004 correspondence from the Trustee to the Debtor's attorney.

13. Subsequently, the Debtor filed an Amended Schedule C admitting that she had \$1,300 in cash on the date of filing, and seeking to claim \$975 of that amount as exempt. In the absence of the Trustee's investigation of the Debtor's financial affairs, neither the Trustee nor this court would ever have learned that the Debtor's original Schedule B was false, and would never have learned of the existence of this concealed asset.

14. Objection is made to the claimed amended exemption by the Debtor pursuant to *In re Kaelin*, 308 F.2d 885 (8<sup>th</sup> Cir. 2002); and *In re Bauer*, 298 B.R. 353 (8<sup>th</sup> Cir. BAP 2003), because the proposed amendment is filed in bad faith.

15. The Debtor also deposited \$380 post-petition which apparently represented reimbursement for pre-petition expenses. The Debtor should be required to immediately turnover the \$380 to the estate, together with the \$1,300 in cash and non-exempt wages of \$183.19 for a total of \$1,863.19.

WHEREFORE, the Trustee requests an order of the Court:

1. Denying Debtor's claimed exemption of "cash from wages" in the amount of \$975.

2. Requiring the Debtor to turnover to the Trustee within two (2) days from the date of the entry of the Court's Order the \$1,300 in cash held by the Debtor at the time of filing, together with \$183.19 in non-exempt wages and expense reimbursement of \$380 for a total of \$1,863.19.

3. For such other and further relief as the court deems appropriate.

**FULLER, SEAVER & RAMETTE, P.A.**

Dated: September 2, 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, the duly appointed Chapter 7 trustee of this Bankruptcy Estate, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on September 2, 2004

/e/ Randall L. Seaver

Randall L. Seaver

Debtor(s)

**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

11 U.S.C. § 522(b)(1): Exemptions provided in 11 U.S.C. § 522(d). NOTE: These exemptions are available only in certain states.

11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
<b><u>SCHEDULE A - REAL PROPERTY</u></b>			
Home- Lot 17 Block 7 Tingdall Bros. Lincoln Hills. Hennepin County, MN.	MSA §§ 510.01, 510.02	25,500.00	217,000.00
<b><u>SCHEDULE B - PERSONAL PROPERTY</u></b>			
<u>Cash from wages.</u>	MSA § 571.922, 550.37 subd. 13	975.00	1,300.00
Miscellaneous household goods	MSA § 550.37 subd.4(b)	500.00	500.00
Miscellaneous Clothing	MSA § 550.37 subd. 4(a)	500.00	500.00
401K Plan	MSA § 550.37 subd. 24	960.00	960.00
Putman Investments (Retirement)	MSA § 550.37 subd. 24	40.00	40.00
<u>Wages accrued but unpaid.</u>	MSA § 571.922, 550.37 subd. 13	549.57	732.76
1998 Mercury Mountaineer	MSA § 550.37 subd. 12a	3,600.00	12,000.00

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Debtor(s)

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None". If additional space is needed in any category, attached a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H" for Husband, "W" for Wife, "J" for Joint, or "C" for Community in the column labeled "HWJC." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions only in Schedule C - Property Claimed as Exempt.

Do not include interests in executory contracts and unexpired leases on the schedule. List them in Schedule G - Executory Contracts and Unexpired Leased. If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property".

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H W J C	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		<b>Twin City Federal Checking Account</b>		<b>0.00</b>
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, include audio, video, and computer equipment.		<b>Miscellaneous household goods</b>		<b>500.00</b>
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		<b>Miscellaneous Clothing</b>		<b>500.00</b>
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		<b>Life Insurance Policy-State Farm-no value after loan repayment</b>		<b>0.00</b>
10. Annuities. Itemize and name each issue.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		<b>401K Plan Putman Investments (Retirement)</b>		<b>960.00 40.00</b>
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			
14. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
15. Accounts receivable.	X			
16. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			

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Debtor(s)

**SCHEDULE B - PERSONAL PROPERTY  
(Continuation Sheet)**

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H W J C	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
18. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	<b>X</b>			
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	<b>X</b>			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	<b>X</b>			
21. Patents, copyrights, and other intellectual property. Give particulars.	<b>X</b>			
22. Licenses, franchises, and other general intangibles. Give particulars.	<b>X</b>			
23. Automobiles, trucks, trailers, and other vehicles and accessories.	<b>X</b>	<b>1998 Mercury Mountaineer</b>		<b>12,000.00</b>
24. Boats, motors, and accessories.	<b>X</b>			
25. Aircraft and accessories.	<b>X</b>			
26. Office equipment, furnishings, and supplies.	<b>X</b>			
27. Machinery, fixtures, equipment, and supplies used in business.	<b>X</b>			
28. Inventory.	<b>X</b>			
29. Animals.	<b>X</b>			
30. Crops - growing or harvested. Give particulars.	<b>X</b>			
31. Farming equipment and implements.	<b>X</b>			
32. Farm supplies, chemicals, and feed.	<b>X</b>			
33. Other personal property of any kind not already listed. Itemize.	<b>X</b>			
<b>TOTAL</b>				<b>14,000.00</b>

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TCF NATIONAL BANK  
801 MARQUETTE AVE  
MINNEAPOLIS MN 55402

Page 2  
STATEMENT DATE  
05-14-04

3851017454  
13



13 19 99  
CYNTHIA V HARVEY  
6637 WASHBURN AVE S  
RICHFIELD MN 55423-1923

YOU MAY DIRECT QUESTIONS ABOUT YOUR DEPOSIT ACCOUNT (INCLUDING QUESTIONS ABOUT DIRECT DEPOSIT OF FUNDS) TO THE BANK AT THE ABOVE ADDRESS OR YOU MAY CALL THE TELEPHONE NUMBER SHOWN AT THE BOTTOM OF YOUR STATEMENT. SEE THE REVERSE SIDE IF YOU WANT TO REPORT DISCREPANCIES ON YOUR DEPOSIT ACCOUNT.

**OTHER WITHDRAWALS AND CHARGES**

DATE	AMOUNT	DESCRIPTION	DATE	AMOUNT	DESCRIPTION
0428	500.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN	0506	500.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN
0428	50.00	QWESTCOMM*TN612 800-244-1111 CO	0506	17.85	WALGREEN 0003 EDINA MN
0428	24.08	QVC*3066086509*2 0 800-367-9444 PA	0507	.50	ATM MINI-STATEMENT FEE ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN
0430	500.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN	0507	28.00	SHELL OIL 5742941 RAMSEY MN
0503	360.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN	0510	17.00	SHELL OIL 5742941 RAMSEY MN
0503	40.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN	0510	14.57	QVC*3063168989*3 0 800-367-9444 PA
0503	30.53	COSTCO GAS #93377 ST LOUIS PARKMN	0512	23.39	SHELL OIL 5742941 RAMSEY MN
0503	21.29	AUTOMATED WITHDRAWAL ULTRA TAN EFT 9179 MINN MN	0513	500.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN
0503	20.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN	0514	60.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN
0503	11.01	HOLIDAY STATIONSTO PLYMOUTH MN	0514	28.99	JCPENNEY STORE 195 EDINA MN
0503	10.01	SUPERAMERICA 4186 RICHFIELD MN	0514	13.79	WALGREEN 0004 CHAMPLIN MN
0504	132.00	OVERDRAFT FEE-INSUFF FUNDS	0514	5.00	MONTHLY SERVICE FEE

**DEPOSITS AND OTHER ADDITIONS**

DATE	AMOUNT	DESCRIPTION	DATE	AMOUNT	DESCRIPTION
0419	22.64	TJMAXX #0238 BLOOMINGTON MN	0505	732.76	AUTOMATED DEPOSIT Anderson & Dahle PAYROLL
0419	3.71	TARGET 0000 EDINA MN	0506	44.97	MARSHALLS #0162 RICHFIELD MN
0421	587.37	AUTOMATED DEPOSIT Anderson & Dahle PAYROLL	0507	60.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN
0427	200.00	DEPOSIT REF # 22159214	0507	380.00	DEPOSIT REF # 15008956
0428	868.02	AUTOMATED DEPOSIT Anderson & Dahle PAYROLL	0507	66.00	INSUFF FUNDS OVERDRAFT FEE REV
0503	30.00	DEPOSIT REF # 26252922	0512	697.91	AUTOMATED DEPOSIT Anderson & Dahle PAYROLL
0504	40.00	ATM TCF SOUTHDALE D. U. 99-07-01 EDINA MN	0514	.04	INTEREST

**NONDEPOSIT INVESTMENT AND INSURANCE PRODUCTS**

\* THE FOLLOWING PRODUCTS OR SERVICES ARE PROVIDED BY TCF FINANCIAL INSURANCE AGENCY, INC. (INSURANCE) OR TCF INVESTMENTS, INC. (SECURITIES), WHICH ARE NON-BANK SUBSIDIARIES OF TCF FINANCIAL CORPORATION. THESE PRODUCTS AND SERVICES ARE: • NOT BANK DEPOSITS • NOT FDIC INSURED • NOT OBLIGATIONS OF, OR GUARANTEED BY, ANY BANK • NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY • MAY GO DOWN IN VALUE. BROKERAGE ACCOUNT VALUES INCLUDE EXECUTED TRADES THAT HAVE NOT YET SETTLED, AND EXCLUDE ANY MUTUAL FUNDS OWNED OUTSIDE THE BROKERAGE ACCOUNT. VALUES SHOWN ARE PROVIDED BY THIRD PARTIES AND ARE BELIEVED ACCURATE BUT ARE NOT GUARANTEED.

**EXHIBIT C**

# HUFFMAN, USEM, SABOE, CRAWFORD & GREENBERG, P.A.

Attorneys At Law

Bruce N. Crawford<sup>+</sup>  
James Olav Saboe  
Ronald H. Usem<sup>++</sup>

1000 Water Park Place  
5101 Olson Memorial Highway  
Minneapolis, Minnesota 55422  
Telephone: 763-545-2720  
Facsimile: 763-545-2350  
Web: www.huscglaw.com

Richard W. Huffman\*  
Craig D. Greenberg

July 8, 2004

Mr. Randall L. Seaver, Trustee  
Portland Corporate Center  
12400 Portland Ave. So., Suite 132  
Burnsville, Mn 55337

In Re: Cindee V. Harvey  
Bankruptcy File No. 04-42501

Dear Mr. Seaver,

At the 341 Hearing of the above entitled debtor you asked for the following documents and/or information: 1) a statement from the Putman account; 2) the proof of the use of cash withdrawals made by the Debtor on April 28, 2004 and May 3, 2004; 3) information as to the deposit of funds made by the Debtor on May 7, 2004 into her TCF account.

1. As to the Putman statements, we are enclosing herewith the statement that you requested.
2. As to the cash withdrawals, I am enclosing herewith a statement from Household Mortgage showing that it required \$1300.00 to hold off the foreclosure of the Debtors homestead. Also enclosed herewith are copies of Western Union money transfers showing that the \$1300.00 taken by the Debtor from the TCF ATM machine was paid to Household Mortgage. At the 341 Hearing the debtor thought that perhaps the \$1300.00 had been paid to Susan Olson but upon checking her records she has now verified that, in fact, the \$1300.00 was paid to Household Finance to cure the delinquencies due under her mortgage.
3. The Debtor does not have a copy of the deposit slip of May 7, 2004 which would show the various components of the deposit made that day, but she indicates that she received these funds after the filing date.

## EXHIBIT E

\*Admitted To Practice In California; International Association Of Practicing Lawyers

\*\*Transportation Lawyers Association; Transportation Intermediaries Association

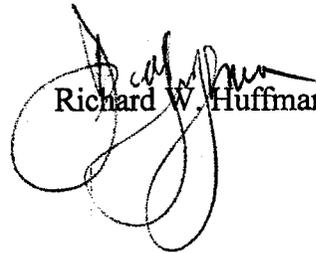
\*Real Property Law Specialist. Certified By The Minnesota Bar Association

July 8, 2004  
Randall Seaver, Trustee  
Page 2

If you require further documentation please so advise.

Yours very truly,

HUFFMAN, USEM, SABOE, CRAWFORD  
& GREENBERG, P.A.



Richard W. Huffman, Esq.

RWH:bab

#1300 - 4/29/04  
#533 - 5/6/04  
5/12/04  
Furnishings Repair  
Re-estimation

# HOUSEHOLD



NEW CONTACT  
ROSA VILLEGAS  
\*47863  
666.824.0824

RE: ACCOUNT NUMBER 3907953

534 + 12.95 = 546.95

CYNTHIA V HARVEY  
6637 WASHBURN AVE S  
RICHFIELD MN 55423-0000

\$560.00

\* 800 365 6730  
\* 47355  
David Verez  
03/26/04

PROPERTY ADDRESS: 6637 WASHBURN AVE S  
RICHFIELD MN 55423

DEAR CUSTOMER,

AS YOU ARE AWARE, THE ABOVE REFERENCED ACCOUNT REMAINS IN DEFAULT. FORTUNATELY, HOUSEHOLD MORTGAGE SERVICES HAS OPTIONS AVAILABLE THAT MAY PREVENT THE POSSIBILITY OF LOSING YOUR MORTGAGED PROPERTY.

TO DISCUSS THESE OPTIONS, PLEASE CONTACT OUR COLLECTIONS DEPARTMENT AT 1(866)825-1812 DURING THE FOLLOWING HOURS:

MONDAY TO THURSDAY - 8AM TO 11PM EST; FRIDAY - 8AM TO 6PM EST  
AND SATURDAY - 8AM TO 12AM EST.

PLEASE GIVE US THE OPPORTUNITY TO GET YOUR ACCOUNT BACK ON TRACK!

THIS LETTER, AND ANY DISCUSSION OR NEGOTIATIONS THAT MAY TRANSPIRE, SHALL IN NO WAY BE CONSTRUED OR CONSIDERED AN ABEYANCE, WAIVER OR FORBEARANCE OF ANY HOUSEHOLD MORTGAGES' RIGHTS UNDER THE LOAN DOCUMENTS OR APPLICABLE LAW. NORMAL COLLECTION ACTIVITY, INCLUDING LEGAL ACTION, WILL CONTINUE UNINTERRUPTED WHILE ANY NEGOTIATIONS ARE UNDERWAY.

SINCERELY,

HOUSEHOLD MORTGAGE SERVICES

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

5.62

4/26 LVM 11AM

HMSFL  
4/B w/ confirmation #

www.westernunion.com

Preferred Customer No. (Número de Cliente Preferido)

Do not write in shaded area / No escriba en el área sombreada oscura

Amount (Monto en dólares) One thousand three hundred two/100

Dollar amount / Not to exceed US\$5,000 / Monto en dólares / No debe exceder US\$5,000

\$1300.00

Agency (Agencia) Snyder's Drug

To (Para) Household Mortgage

Company name (Nombre de la compañía)

Time (Hora) 6:26 PM Date (Fecha) 1/1

City (Ciudad) HMS FL

State (Estado) Florida

Sent time (Hora de envío) EDT Date (Fecha) 04/29/04

Sender's name (Nombre del remitente) Cindee V. Harvey

Type (Tipo) Driver's License / ID. Number (Número) H610132847908

Sender's account number with company (Número de cuenta del remitente con la compañía) 3907953

Social Security Number (Número de seguro social)

Sender's telephone (area code) (Número del remitente (código de área)) 618 Number (Número) 8616068

Money Transfer Control Number (Número de control de transferencia de fondos)

2978797856

Sender's address (Dirección del remitente) 6637 Washburn Ave So

Street (Calle)

Amount (Cantidad) 1300.00

Richfield MN 55423

City (Ciudad)

State (Estado)

Zip (Código postal)

Charge (Cargo) 12.95

Attention: (Atención) David Verez

Tax (Impuestos)

Total amount received (Monto total recibido) 1312.95

Customer's signature (Firma del cliente remitente) Cindee V. Harvey

Agent's signature (Firma del agente) Candace

BY SIGNING, THE SENDER ACKNOWLEDGES AN UNDERSTANDING OF THE TERMS AND CONDITIONS OF THIS CONTRACT. CON SU FIRMA, EL REMITENTE RECONOCE QUE ENTIENDE LOS TÉRMINOS Y CONDICIONES DEL PRESENTE CONVENIO. \*IN ADDITION TO THE TRANSFER FEE, WESTERN UNION ALSO MAKES MONEY WHEN IT CHANGES YOUR DOLLARS INTO FOREIGN CURRENCY. PLEASE SEE REVERSE SIDE FOR MORE INFORMATION REGARDING CURRENCY EXCHANGE.

Rate of Exchange\* (Tipo de cambio\*) Amount to be Paid\* (Monto por pagar\*)

\*ADEMÁS DE LOS CARGOS POR EL SERVICIO DE TRANSFERENCIA, WESTERN UNION GANA DINERO CUANDO CAMBIA SUS DÓLARES AMERICANOS POR MONEDA EXTRANJERA. POR FAVOR LEA EL REVERSO DE ESTE FORMULARIO PARA MÁS INFORMACIÓN SOBRE EL CAMBIO DE MONEDA.

©2000-2002. Western Union Holdings, Inc. All Rights Reserved. Derechos Reservados.

QFMQCDOMB (06/03)

170-1 8649-0N

Jul 1. 8. 2004 12:08PM

SNYDER DRUGS #5080  
12455 CHAMPLIN DR  
CHAMPLIN MN 55316

Oper ID: 203 Quick Collect  
04/29/04  
626P EDT MTCN: 297-879-7856

Sender/Remitente: CINDEE V HARVEY  
Receiver/Destinatarario: HOUSEHOLD MORTGAGE

Code City/Codigo de la ciudad: HMS FL  
Account #/Numero de cuenta: 3907953  
Reference #/Numero de referencia:  
Attn/Atencion: DAVID

**WESTERN UNION MONEY TRANSFER**

Amount/Cantidad: \$ 1300.00  
Charge(s)/Cargos:  
Service/Servicio: 12.95  
Total/Total: \$ 1312.95

Need to get away? Book your Continental Airlines reservations at [continental.com](http://continental.com) or by calling (800)523-FARE and send your cash payment via Western Union.

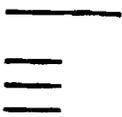
Agent Signature /  
Firma del Agente

*Candace*

Customer Signature /  
Firma del Cliente

CERTAIN TERMS AND CONDITIONS GOVERNING THE MONEY TRANSFER SERVICE YOU HAVE SELECTED ARE SET FORTH ON THE BACK OF THIS FORM. BY SIGNING THIS FORM, YOU ARE AGREEING TO THOSE TERMS AND CONDITIONS.

ALGUNOS TÉRMINOS Y CONDICIONES QUE RIGEN EL SERVICIO DE TRANSFERENCIA DE DINERO QUE USTED HA ELEGIDO, ESTÁN ESPECIFICADOS EN EL REVERSO DE ESTE FORMULARIO. AL FIRMARLO, USTED ESTÁ DE ACUERDO CON ESOS TÉRMINOS Y CONDICIONES.



**Confirmation of Activity**  
January 22, 2004

# PUTNAM INVESTMENTS

CYNTHIA V HARVEY  
IRA PLAN  
6637 WASHBURN AVE S  
RICHFIELD MN 55423-1923

Fund: **PUTNAM VOYAGER FUND**  
**CL-B**

Account: **A54-3-396-56-2275-BBB-P**

Client Number: **0416524209**

If this investment is for your IRA,  
please tell us the year to which it  
applies: \_\_\_\_\_

To invest by mail, return this slip and your  
check payable to Putnam Investments in  
the enclosed envelope. To establish a  
monthly investment plan, see other side.

Minimum Investment: \$50

\$    ,    .

Print spelling or address changes above.

61959439399965622795626262770000000001

PUTNAM FIDUCIARY TRUST CO TRUSTEE  
CYNTHIA V HARVEY  
IRA PLAN

Investment Firm: **TCF SECURITIES INC**  
Representative: **MS. SHARON G. MURPHY-019 952-890-0999**  
For Putnam assistance: **1-800-225-1581**

**Putnam Voyager Fund**  
**CL-B**

**ACCOUNT: A54-3-396-56-2275-BBB-P**

Date	Account Activity Detail	Amount	Share Price	Number of Shares	Share Balance
01/22/2004	Early Retirement Distribution	\$17.37	\$14.47	28.498	2.655
	Contingent Deferred Sales Charge	\$12.37			

Total Value **\$38.42**

An IRS penalty may apply to early retirement distributions. Please consult your tax advisor.

*W of 4/1/04 #37.91*

Detach Check Here

Confirmation of Activity  
January 22, 2004

# PUTNAM INVESTMENTS

CYNTHIA V HARVEY  
IRA PLAN  
6637 WASHBURN AVE S  
RICHFIELD MN 55423-1923

Fund: **PUTNAM VOYAGER FUND**  
**CL-B**  
Account: **A54-3-396-56-2275-BBB-P**  
Client Number: **0416524209**  
If this investment is for your IRA,  
please tell us the year to which it  
applies: \_\_\_\_\_

To invest by mail, return this slip and your  
check payable to Putnam Investments in  
the enclosed envelope. To establish a  
monthly investment plan, see other side.  
Minimum Investment: \$50

\$    ,    .

Print spelling or address changes above.

61959439399965622795626262770000000001

PUTNAM FIDUCIARY TRUST CO TRUSTEE  
CYNTHIA V HARVEY  
IRA PLAN

**Putnam Voyager Fund**  
**CL-B**

**ACCOUNT: A54-3-396-56-2275-BBB-P**

Investment Firm: **TCF SECURITIES INC**  
Representative: **MS. SHARON G. MURPHY-019 952-890-0999**  
For Putnam assistance: **1-800-225-1581**  
Continued from previous page.

Shares of mutual funds are not deposits of, or guaranteed or endorsed  
by, any financial institution; are not insured by the Federal Deposit  
Insurance Corporation (FDIC), the Federal Reserve Board, or any other  
agency; and involve risk, including possible loss of principal amount.

**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 22, 2004

Richard W. Huffman  
Huffman Usem Saboe & Crawford  
5101 Olson Memorial Highway, Suite 100  
Golden Valley, MN 55422

RE: Cindee V. Harvey  
BKY No. 04-42501

Dear Mr. Huffman:

As you know, I am the Trustee in the above matter which was commenced on May 3, 2004.

Based on my review of the Debtor's records, it appears to me that the \$732.76 automated deposit made on May 5, 2004, represents entirely pre-petition wages which were property of the bankruptcy estate. The Debtor must pay that amount to the estate. Also, the Debtor deposited \$380 on May 7, 2004 which was apparently reimbursement of some sort. She must pay those funds to the estate. The total of these items is \$1,112.76

Additionally, while the Debtor indicated in her schedules that she had no cash, her account record reflects the following cash withdrawals on the following days:

4/28	\$500.00
4/30	\$500.00
5/03	\$420.00

As to the \$1,000 withdrawn 4/28 and 4/30, unless the Debtor can provide me with written proof of her use of funds prior to commencement of the bankruptcy case, I expect that she will pay those funds over to the estate. As to the \$420 withdrawn on the date of filing, that money is estate property and must be turned over by the Debtor.

Please make certain that the Debtor turns over to the estate the above funds within ten days from the date of this correspondence.

Very truly yours,

*Randall L. Seaver*  
Randall L. Seaver *RLS:kif*  
Trustee

RLS:kif

**EXHIBIT F**

# HUFFMAN, USEM, SABOE, CRAWFORD & GREENBERG, P.A.

Attorneys At Law

Bruce N. Crawford+  
James Olav Saboe  
Ronald H. Usem\*\*

1000 Water Park Place  
5101 Olson Memorial Highway  
Minneapolis, Minnesota 55422  
Telephone: 763-545-2720  
Facsimile: 763-545-2350  
Web: www.huscglaw.com

Richard W. Huffman\*  
Craig D. Greenberg

July 30, 2004

Mr. Randall Seaver, Trustee  
Portland Corporate Center  
12400 Portland Ave. So., Suite 132  
Burnsville, MN 55337

Re: Cindee V. Harvey  
Bankruptcy File No. 04-42501

Dear Mr. Seaver,

I am again enclosing herewith a copy of my letter of July 8, 2004 explaining the use of the cash withdrawals made by Ms. Harvey shortly before the bankruptcy to pay off the delinquency on her Household Finance mortgage. As you can see, these funds were not in the hands of the Debtor as of the filing date.

With regard to Ms. Harvey's pre-petition wages, only one quarter of a Debtor's net take home wages are subject to garnishment or seizure under Minnesota law.

Please review my letter of July 8, 2004 and the supporting documentation and call me concerning this matter.

Yours very truly,

HUFFMAN, USEM, SABOE, CRAWFORD  
& GREENBERG, P.A.

  
Richard W. Huffman, Esq.

RWH:bab

Enclosure

## EXHIBIT G

\*Admitted To Practice In California; International Association Of Practicing Lawyers

\*\*Transportation Lawyers Association; Transportation Intermediaries Association

\*Real Property Law Specialist. Certified By The Minnesota Bar Association

**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

August 9, 2004

Richard W. Huffman  
Huffman Usem Saboe & Crawford  
5101 Olson Memorial Highway, Suite 100  
Golden Valley, MN 55422

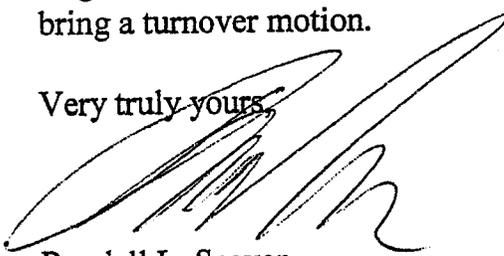
RE: Cindee V. Harvey  
BKY No. 04-42501

Dear Mr. Huffman:

I am writing this in response to your July 30, 2004 correspondence. You will note that the Debtor wired the money to Household Mortgage on April 29 at approximately 6:36 p.m. Obviously the \$500 that she withdrew the next day on April 30 was not a part of that wire transfer. Also, obviously, the \$420 that she withdrew on the date of bankruptcy filing was not a part of the April 20 transfer. This is a demand for immediate payment of that \$920. If I have not received it within two weeks from the date of this letter, together with the \$380 deposited on May 7, I will bring a turnover motion.

Additionally, as to pre-petition wages, they are not exempt unless and until they are disclosed and claimed as exempt, neither of which have occurred. This is a demand for the pre-petition wages in the amount of \$732.76. Again, if I have not received this within two weeks, I will bring a turnover motion.

Very truly yours,



Randall L. Seaver  
Trustee

RLS:klf

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

Bky No. 04-42501

-----  
In re:

Cindee V. Harvey,

Debtor.

**MEMORANDUM IN SUPPORT OF OBJECTION  
TO CLAIMED AMENDED EXEMPTION**

-----  
**FACTUAL BACKGROUND**

The Debtor's original Schedule B stated that the Debtor had no cash. The Trustee's examination of records obtained from the Debtor indicated that she withdrew \$1,400 in cash from ATM machines in the several days prior to filing. A review of documents also reflected that she deposited \$380 into her checking account four days after her bankruptcy was filed.

Inquiry was made of her at the §341 meeting regarding the cash withdrawals. She indicated that perhaps the money had been paid to a friend, Susan Olson. See Motion, Ex. E. Subsequently the Debtor changed her position and then asserted to the Trustee that the cash withdrawn had been used to "hold off the foreclosure of the debtors homestead." Motion Ex. E.

The Trustee then pointed out to the Debtor's attorney that at least \$920 of the cash in possession of the Debtor could not have been used to reinstate the mortgage because it was not withdrawn from her account until after monies had been wired to the mortgage company. Motion Ex. H.

The Debtor then again changed her position as to cash and filed an amended Schedule B and C admitting that she had \$1,300 in cash in her possession as of the date of filing, and attempting to exempt \$975 of that money.

The Trustee has objected to the claimed exemption.

The Trustee also seeks turnover of the \$1,300 in cash which the Debtor now admits she had at the time of filing. The Trustee also seeks turnover of \$380 of apparent expense reimbursements which the Debtor deposited several days after filing. The Trustee also seeks turnover of non-exempt wages.

### **LEGAL ARGUMENT**

#### **1. Bad Faith.**

The Bankruptcy Court has discretion to deny an amendment of a Debtor's exemptions if that amendment is proposed in bad faith. *In re Kaelin*, 308 F.3d 885, 888 (8<sup>th</sup> Cir. 2002); *In re Bauer*, 298 E.R. 353, 356 (8<sup>th</sup> Cir. BAP).

Additionally, where there is prejudice to creditors, the court can also deny a Debtor's claimed amended exemption. *Id.*

It is difficult to imagine a case more clearly evidencing bad faith.

The Debtor's dishonesty and bad faith in this matter is evidenced by the series of events relating to the \$1,300 in cash.

First, in her original Schedule B the Debtor asserted, under penalty of perjury, that she had no cash.

Next, after the Trustee's examination of records revealed cash ATM withdrawals by the Debtor of approximately \$1,400 in the several days prior to filing, the Debtor attempted to mislead the Trustee into thinking that the monies had been paid to a friend of hers.

Next, the Debtor attempted to mislead the Trustee into believing that all of the cash had been spent to reinstate her mortgage. When the Trustee pointed out that was not possible because of the timing of the withdrawals the Debtor finally admitted that she in fact had \$1,300 in cash on the date of filing. She then filed an amended Schedule B and Schedule C and attempted to claim \$975 of the concealed asset as exempt.

The above-described dishonesty of the Debtor and misleading statements of the Debtor certainly demonstrate the bad faith of the Debtor in this case. The Debtor concealed the \$1,300 in cash that she had at the time of filing, and then attempted to mislead the Trustee with different stories as to her purported use of those monies. Finally, when she realized that her attempts to mislead the Trustee would be unsuccessful, she admitted that she had \$1,300 in cash on the date of filing and attempted to claim \$975 of that amount as exempt.

As the *Kaelin* court indicated:

When it is discovered that a debtor has attempted to hide an asset, it will generally support a finding of bad faith.

*Kaelin*, supra at 890.

There is no doubt that this Debtor intentionally concealed an asset of the estate. The only reason the Trustee knows that this asset exists is because of his diligence. This is an extreme example of bad faith by a Debtor, and the Debtor's claimed exemption of the cash be denied.

**2. No statutory basis for exemption.**

In addition to the Debtor's bad faith, the statutes she relies upon provide no basis for an exemption of cash. Minn. Stat. §550.37 subd. 13 applies only to earnings and monies traceable to those earnings for 20 days after deposit into a financial institution. There is no reference in Minn. Stat. §550.37 subd. 13 to cash withdrawn from an account by a debtor.

Similarly, Minn Stat. §571.922 provides no exemption for cash.

**3. Turnover.**

The Debtor should be immediately required to turnover the \$1,300 in cash she now admits having at the time of filing. She should also be required to turnover to the Trustee the \$380 in expense reimbursement and \$183.19 in non-exempt wages.

**CONCLUSION**

For the reasons set forth above, the Debtor's claimed exemption of \$1,300 in cash should be denied, and the Debtor should be ordered to immediately turnover \$1,863.19 to the Trustee.

**FULLER, SEAVER & RAMETTE, P.A.**

Dated: September 2, 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

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

BKY No. 04-42501

-----  
In re:

Cindee V. Harvey,

**UNSWORN CERTIFICATE OF SERVICE**

Debtor.

-----

I, Kari L. Fogarty, declare under penalty of perjury that on September 2, 2004, I mailed a copy of the following:

1. Notice of Hearing and Motion Objecting to Claimed Exemption and for Turnover;  
and
2. Order (proposed)

by first class mail, postage prepaid to each entity named below at the address stated below for each entity:

Cindee V. Harvey  
6637 Washburn Avenue South  
Richfield, MN 55423

Richard W. Huffman  
Huffman Usem Saboe & Crawford  
5101 Olson Memorial Highway, Suite 100  
Golden Valley, MN 55422

John K. Bouquet  
Thomsen & Nybeck, P.A.  
3300 Edinborough Way, Suite 600  
Edina, MN 55435

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

**FULLER, SEAVER & RAMETTE, P.A.**

Dated: September 2, 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. 04-42501

-----  
In re:

Cindee V. Harvey,

**ORDER**

Debtor.

-----

At Minneapolis, Minnesota this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

The above matter came before the court on the motion of the Chapter 7 Trustee for an award of sanctions against the Debtor and his attorney and on the Trustee's objection to claimed exemptions of the Debtor. Appearances were as noted upon the record.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED as follows:

1. The Debtor's claimed exemption of "cash from wages" in the amount of \$975 is denied.
2. The Debtor is ordered to turnover to the Trustee the sum of \$1,863.19 within two (2) days from the date of the entry of this Order.

**BY THE COURT:**

\_\_\_\_\_  
Robert J. Kressel  
U.S. Bankruptcy Judge