

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CHAPTER 7

BKY CASE NO. 04-44394-NCD

David M. Pecoraro,

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

Debtor(s).

TO: THE UNITED STATES BANKRUPTCY COURT, THE UNITED STATES TRUSTEE, THE DEBTOR, AND THE DEBTOR'S ATTORNEY.

1. Julia A. Christians, Chapter 7 Trustee herein, moves the Court for the relief requested below and gives Notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 10, 2004, at 10:30 a.m., in Courtroom No. 7, at U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 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 November 5, 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 November 1, 2004, 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.**

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 6072-1, this proceeding arises under 11 U.S.C. §542(a). The petition commencing this case as a Chapter 7 case was filed on August 6, 2004. This case is now pending in this Court.

4. Movant requests an order directing Debtor to turn over current balance sheets and financial statements for all entities in which Debtor is an officer and/or shareholder; a list of all omitted creditors including, but not limited to, creditors holding the debtor's personal guarantee for business leases and similar contracts; full address for America's Fitness Clubs LLC and name, address, and telephone number for any co-owners in said business; copies of all documents related in any manner to the retainer paid by Debtor in connection with the Exhale Fitness Club – Fargo LLC Chapter 11 bankruptcy; copies of most recent statements for the mortgage(s) against the homestead property, the loan application for the most recent financing or re-financing of the property and all appraisals of the property completed in the past two years; copies of all financial statements issued and/or prepared by Debtor within the past two years; copies of Debtor's homeowner's insurance policy, including any riders; Debtor's 2003 state and federal tax returns; and, statements and check registers for all accounts in which Debtor held any ownership, depository and/or signatory rights, with any financial institution, for the period from January 1, 2004 through the present.

4. The Trustee demanded turnover of the above-referenced documents and property.

However, Debtor has failed to respond. Therefore, the Trustee requests an order directing the Debtor to turn over the afore-said documents and property without further delay.

Dated: October 13, 2004

By /e/ Julia A. Christians
Julia A. Christians, Trustee
One Financial Plaza, #2500
120 South Sixth Street
Minneapolis, MN 55402
612/ 338-5815

VERIFICATION

I, Julia A. Christians, 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/ Julia A. Christians
Julia A. Christians

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:) Chapter 7
) Case No. 04-44394-NCD
David M. Pecoraro,)
)
Debtor.)

UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on October 13, 2004, I mailed copies of the attached **Notice of Hearing and Motion for Turnover of Property**; and **proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

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

David M. Pecoraro
16006 Temple Lane
Minnetonka, MN 55345

Joseph W. Dicker
1406 West Lake Street
Suite 208
Minneapolis, MN 55408

Executed on: October 13, 2004

/s/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stuebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CHAPTER 7

BKY CASE NO. 04-44394-NCD

David M. Pecoraro,

ORDER

Debtor(s).

This matter came on for hearing before the undersigned Bankruptcy Judge on the 10th day of November, 2004, at 10:30 a.m., on the Motion of Julia A. Christians, Chapter 7 Trustee, for turnover of property of the above-named debtor.

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:

That Debtor turn over to the Trustee within 7 days of the date of this order current balance sheets and financial statements for all entities in which Debtor is an officer and/or shareholder; a list of all omitted creditors including, but not limited to, creditors holding the debtor's personal guarantee for business leases and similar contracts; full address for America's Fitness Clubs LLC and name, address, and telephone number for any co-owners in said business; copies of all documents related in any manner to the retainer paid by Debtor in connection with the Exhale Fitness Club – Fargo LLC Chapter 11 bankruptcy; copies of most recent statements for the mortgage(s) against the homestead property, the loan application for the most recent financing or re-financing of the property and all appraisals of the property completed in the past two years; copies of all financial statements issued and/or prepared by Debtor within the past two years; copies of Debtor's homeowner's insurance policy, including any riders; Debtor's 2003 state and federal tax returns; and, statements and check registers for all accounts in which Debtor held any ownership, depository and/or signatory rights, with any financial institution, for the period from January 1, 2004 through the present.

Dated: _____

The Honorable Nancy C. Dreher
United States Bankruptcy Judge