

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE:

BKY 04-44702 RJK
Chapter 7

Muhammad Abdul Wahab.

Debtor.

**MOTION FOR RULE 2004 EXAMINATION OF
MUHAMMAD ABDUL WAHAB**

TO: ALL PARTIES SPECIFIED IN LOCAL RULE 9013-4(c).

1. Associated Bank, NA (“Associated Bank”), secured creditor of the Debtor and a party in interest, by and through its undersigned attorney, moves the Court for Court for an order directing **Muhammad Abdul Wahab** to appear for a deposition pursuant to Fed.R.Bankr.2004 and gives notice of hearing herewith.

2. The Court will hold a hearing on this Motion on Wednesday, the 6th day of October, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard before the Honorable Robert J. Kressel, Judge of Bankruptcy Court, in Courtroom No. 8 West, on the 8th Floor, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this Motion must be filed and delivered not later than Friday October 1, 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 Monday September 27, 2004 which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holiday). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this case was filed on August 23, 2004. The case is now pending before this Court.

5. This request arises under Fed.R.Bankr. P. 2004(a) and (b) and 9016, and Fed.R.Civ.P.45. This motion is filed under Fed.R.Bankr.P. 9014 and Local Rule 9013-4(c). The Movant requests entry of an order directing Muhammad Abdul Wahab to appear for a deposition before October 15, 2004.

STATEMENT OF FACTS

6. That prior to the commencement of this Chapter 7 case, on or about September 17, 2001, Advanced Computer Technologies executed and delivered a Promissory Note to Associated Bank in the principal amount of Five Hundred Thousand and no/100 Dollars (\$500,000.00).

7. The Note matured on May 5, 2002, and Associated Bank has demanded payment in full of all obligations under the note. Advanced has failed to pay all of its obligations under the Note and therefore is in default.

8. That Advanced owes Associated Bank the sum of Forty-One Thousand Three Hundred One and 93/100 Dollars (\$41,301.93) in interest as of May 21, 2003, plus a per diem of Eighty-Seven and 56/100 Dollars (\$87.56). Further pursuant to the terms of the Note, Advanced agreed to the payment of Associated Bank's fees, legal fees and costs should the account be referred to collection.

9. That the Debtor Muhammad Wahab executed and delivered to Associated Bank a personal guaranty of the obligations of Advanced due to Associated Bank.

10. That pursuant to the terms of the aforesaid guaranty, Debtor Wahab guaranteed the payment and performance of any and all indebtedness of Advanced. That upon default by Advanced, Associated Bank made demand for payment from Debtor Wahab, and Wahab has failed and refused to make payment to Associated Bank pursuant to the terms of the guaranty.

11. That pursuant to the terms of said guaranty, Debtor Wahab is, therefore, indebted to Associated Bank in the principal amount of Four Hundred Thirty-Four Thousand Seven Hundred Eight-Five and 19/100 Dollars (\$434,785.19), plus interest in the amount of Forty-One Thousand Three Hundred One and 93/100 Dollars (\$41,301.93), plus late fees, collection costs and the bank's reasonable attorney fees, as well as continuing interest in the amount of Eighty-Seven and 56/100 Dollars (\$87.56) per day.

12. To secure Advanced's obligations under the terms of the Note, Advanced executed a Security Agreement granting to Associated Bank a security interest over all of its assets as specifically spelled out in the collateral description section of the Security Agreement.

13. That pursuant to the terms of the Security Agreement, if Advanced defaults under the terms of the Note, Associated Bank can take whatever steps necessary to secure possession of its collateral, as well as collect on the accounts receivable covered by its collateral.

14. On or about March 10, 2003, Associated Bank requested the services of The Gurstel Law Firm, P.A. to assist them in collecting on a Promissory Note, Commercial Security Agreement, and Commercial Guaranty that Advanced and Debtor Wahab had defaulted upon.

15. A Summons and Complaint was served upon Debtor Wahab on September 4, 2003 at approximately 1:50 p.m. Wahab did not provide an Answer. As a result, judgment was entered in favor of Associated Bank against Debtor Wahab on June 2, 2004 in the amount of \$482,023.34

16. In light of the information disclosed on Wahab's bankruptcy petition and schedules, Associated Bank challenges the financial information he provided to the bank in order to obtain the loan. Associated Bank believes that Wahab may have made fraudulent misrepresentations to the bank. The bank would also like to know the disposition of Advanced assets and Wahab's involvement.

17. Associated Bank would like to investigate whether Debtor filed for bankruptcy protection in good faith

WHEREFORE, Associated Bank, NA respectfully asks that the Court enter an order pursuant to Fed.R.Bankr.P. 2004 directing Muhammad Abdul Wahab to appear at a deposition to be noticed by Associated Bank, NA

Dated this 20th day of September, 2004.

THE GURSTEL LAW FIRM, P.A.

BY /e/ Jennifer Berquist
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

BKY 04-44702 RJK

IN RE:

Muhammad Abdul Wahab,
Debtor.

MEMORANDUM IN SUPPORT OF MOTION FOR RULE 2004
EXAMINATION OF MUHAMMAD ABDUL WAHAB

On or about September 17, 2001, Debtor Muhammad Abdul Wahab executed and delivered a Promissory Note, Commercial Security Agreement, and Commercial Guaranty for the benefit of Advanced Computer Technologies to Associated Bank. Debtor Wahab personally guaranteed the obligations of Advanced Computer Technologies. Judgment was entered in favor of Associated Bank against Debtor Wahab and Advanced Computer Technologies on June 2, 2004 in the amount of \$482,023.34. Associated Bank believes that Muhammad Abdul Wahab has the information necessary to find out the disposition of the assets of Advanced Computer Technologies. Further, Associated Bank would like to investigate whether Debtor filed for bankruptcy protection in good faith. Associated Bank asks the Court to order Muhammad Abdul Wahab to testify at a deposition under Fed.R.Bankr. P. 2004.

FACTS

The facts are as set forth in the Notice of Motion for a Rule 2004 Deposition of Muhammad Abdul Wahab, which is filed and served herewith.

DISCUSSION

Rule 2004 examinations may be used to inquire into the possibility of obtaining assets for the benefit of the bankruptcy estate. In re Mittco, 44 B.R. 35 (Bankr.E.D. Wisc. 1984). Information pertaining to assets which may be brought into the estate is a proper area of inquiry because it pertains to the debtor's financial affairs and would affect the administration of the debtor's estate. Id. at 37. The nature of such an investigation can be broad and can even be in the nature of a fishing expedition. In re Vantage Petroleum Corp., 34 B.R. 650, 651 (Bankr.E.D.N.Y. 1983).

Associated Bank is trying to find out what happened to the monies received when Debtor Muhammad Abdul Wahab executed and delivered a Promissory Note, Commercial Security Agreement, and Commercial Guaranty to Associated Bank on behalf of Advanced Computer Technologies. Further, Associated Bank would like to discover what happened to the assets of Advanced Computer Technologies and Debtor Muhammad Abdul Wahab's involvement. Thus, Associated Bank investigation relates to property of the Debtor and his control over the assets of Advanced Computer Technologies. Associated Bank' investigation also relates to "matter[s] which may affect the administration of the debtor's estate" under Rule 2004(b). Consequently, the Court should order the examination of Muhammad Abdul Wahab, pursuant to Rule 2004(b).

CONCLUSION

Associated Bank respectfully asks that the Court grant its motion for a Rule 2004 examination in order to provide information about the Debtor's property that is pertinent to the administration of the estate.

Dated this 20th day of September, 2004.

THE GURSTEL LAW FIRM, P.A.

BY /e/ *Jennifer Berquist*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY 04-44702 RJK
Chapter 7

IN RE:

Muhammad Abdul Wahab,

**UNSWORN CERTIFICATE
OF SERVICE**

Debtor.

I, Jennifer Berquist, declare under penalty of perjury, that I am an employee of The Gurstel Law Firm, P.A. and on the 20th day of September, 2004, I served copies of the attached Notice of Hearing and Request For Rule 2004 Examination of Muhammad Abdul Wahab, Memorandum of Law and proposed Order, on all persons listed below, at the addresses shown, by mailing to each of them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota, to-wit:

MUHAMMAD ABDUL WAHAB
1717 WEST 75TH STREET APT 1E
RICHFIELD, MINNESOTA 55423

CURTIS K. WALKER, ESQ.
4356 NICOLLET AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55409

RANDALL L. SEAVER, ESQ.
TRUSTEE
12400 PORTLAND AVENUE SOUTH, SUITE 132
BURNSVILLE, MINNESOTA 55337

U S TRUSTEE'S OFFICE
1015 U S COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

Executed on: September 20, 2004

*/e/ Jennifer Berquist*_____
Jennifer Berquist
401 North Third Street, Suite 590
Minneapolis, Minnesota 55401

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

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Chapter 7

Muhammad Abdul Wahab,

Debtor.

**ORDER GRANTING A RULE 2004
EXAMINATION OF MUHAMMAD ABDUL WAHAB**

At Minneapolis, Minnesota this 6th day of October, 2004.

This case came before the Court on October 6, 2004, on the motion of Associated Bank, NA (“Associated Bank”), a secured creditor of the Debtor, pursuant to Bankruptcy Rule 2004(a) and Local Rule 2004(a) seeking an order so that it can notice the examination of the Debtor, Muhammad Abdul Wahab.

There were no objections to the motion.

Based on all files and records herein, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The Motion for a Rule 2004 Examination is GRANTED; and
2. Associated Bank, NA shall serve and file a Notice of Rule 2004 Examination, which shall identify the entity to be examined and the time and place for taking the examination pursuant to Local Rule 2004(b).

DATED:

BY THE COURT:

The Honorable Robert J. Kressel
Judge of Bankruptcy Court