

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Lee C. Jackson,

Case No: 03-30108-GFK

Debtor(s).

NOTICE OF HEARING AND MOTION FOR TURNOVER

TO: THE ABOVE NAMED DEBTOR, HIS ATTORNEY JEFFREY M. BRUZEK, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 25, 2004 at 2:30 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, in Court Room No: 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 2:30 p.m. on October 20, 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 October 14, 2004, which is seven before the time set for the hearing (excluding Saturdays, Sundays and holidays). **IF NO RESPONSE IS TIMELY FILED, THE COURT MAY IN ITS DISCRETION ENTER AN ORDER GRANTING TURNOVER WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy procedure 4002, and Local Rule 1070-1. The petition commencing the debtor(s)' Chapter 7 case was filed on January 7, 2003. Charles W. Ries was appointed as Chapter 7 trustee on January 7, 2003. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate, and certain documents and information in order to properly administer the bankruptcy case.

6. By correspondence dated March 6, 2003; May 1, 2003; June 23, 2003; July 3, 2003; August 4, 2003; December 23, 2003; April 15, 2004; September 15, 2004; and October 4, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property of the estate and information necessary to complete case administration.

7. The debtor has failed to turn over:
- a. Copies of 2002 state and federal returns and all refunds received;

- b. Copies of bank statements covering the date of filing and turnover of the balance on hand in the accounts as of the date of filing;
- c. Copy of check #3059 in the amount of \$1,300 that cleared on December 4, 2002 and all documentation relating to the payment, including invoices.
- d. Non-exempt wages due at the date of filing of \$1,708.45.

8. Because the debtor(s) failed to provide the requested information and assets, the trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704.

9. The trustee has incurred costs and expenses, including attorney fees in bringing this motion.

10. In order to ensure that the debtor(s) comply with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. § 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtor(s) not promptly comply with its provisions.

11. This verified motion is based upon all of the files and records herein.

12. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor(s) to turn over to the trustee the following:
 - a. Copies of 2002 state and federal returns and all refunds received;
 - b. Copies of bank statements covering the date of filing and turnover of the balance on hand in the accounts as of the date of filing;
 - c. Copy of check #3059 in the amount of \$1,300 that cleared on December 4, 2002 and all documentation relating to the payment, including invoices.
 - d. Non-exempt wages due at the date of filing of \$1,708.45.
2. Directing the debtor(s) to complete the turnover of information and assets within 30 days of the entry of an order granting the trustee's motion.
3. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
4. For costs and attorney fees of \$250.00 in connection with bringing this motion.
5. For such other relief as the Court deems just and equitable.

Dated this 11th day of October, 2004

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion for Turnover and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
RICHARD H. KAKELDEY
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
STACEY R. EDWARDS JONES
KRISTINE HINDS MACLEAN

March 06, 2003

PHONE: 507.625.6600

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Mr. Bruzek:

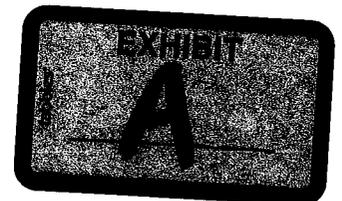
I would appreciate receiving:

1. Copies of the debtor's 2002 tax returns,
2. Any refunds received,
3. Bank statements for November and December 2002, and January 2003,
4. Monies in the accounts at the end of the day of January 6th.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra



UNION SQUARE BUSINESS CENTER • SUITE 200
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007
PHONE: 507.625.6600 • FAX: 507.625.4002 • E MAIL: mrr-law@mrr-law.com



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN

PHONE: 507.625.6600

May 01, 2003

Richard J Pearson
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Gentlemen:

I am enclosing a letter dated March 6, 2003. I would appreciate a response from someone representing this debtor.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

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*BOARD CERTIFIED AS CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY AND/OR THE MINNESOTA STATE BAR ASSOCIATION
**ALSO ADMITTED IN SOUTH DAKOTA



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN

PHONE: 507.625.6600

June 23, 2003

Richard J Pearson
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Gentlemen:

In reviewing this file, there are a number of open issues that need to be addressed.

We had filed an Objection to the Claim of Exemptions on the debtor's personal injury claim. Mr. Bruzek entered a Response; a Stipulation to Settlement and proposed Order was drafted and sent to Mr. Bruzek by fax dated March 5, 2003.

To-date, I have not received the signed Stipulation back, and nothing has been docketed on the Objection to Exemption.

I sent a request letter out on March 6th to Mr. Bruzek, and when no answer was forthcoming, I sent another letter out to both of you dated May 1. Copies of both letters are enclosed, along with another copy of the Stipulation to Settlement and proposed Order.

I would appreciate receiving the name and address of the attorney who is working the personal injury claim for Mr. Jackson.

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June 23, 2003

Page 2

If I haven't received a response within 15 calendar days, I would intend to proceed with a turnover action.

Sincerely,

Charles W. Ries

cw_ries@mrr-law.com

CWR:jra

Enc.



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN

PHONE: 507.625.6600

July 03, 2003

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

do 1/7/03

Dear Mr. Bruzek:

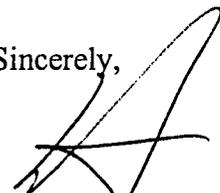
I would like copy of check number 3059 in the amount of \$1,300 that was cashed on December 4th, and an explanation as to what those funds were used for, bearing in mind that it cleared the bank shortly before the bankruptcy was filed.

Also, in reviewing the information provided, I don't see that I have got the entire statement for January, and I cannot figure out what the balance in the account was as of that date in large part because I don't have the dates of the credits.

I also cannot tie out the deposit to the detailed statement. If the debtor could explain that, I would appreciate it.

Conceptually, adjusting the (d)(5) would be acceptable, but I want to make absolutely sure that the debtor understands that the bankruptcy estate needs to be involved in any settlement.

Sincerely,



Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

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CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN

PHONE: 507.625.6600

August 04, 2003

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Mr. Bruzek:

Enclosed is my letter to you dated July 3, 2003. The information requested in this letter was to help determine the amount of (d)(5) the debtor has available to exempt his personal injury settlement.

I would appreciate it if you could send forth the requested information so we may update the Stipulation to Settlement to show an accurate amount available for his unused (d)(5). I also need to forward this information the Mr. Etzler, the personal injury attorney, to let him know what the bankruptcy should receive, pending a settlement being offered.

I would appreciate your immediate attention.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

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GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
KRISTINE HINDS MACLEAN
JORUN GROE MEIERDING*
TANYA M. JOHNSON*

December 23, 2003

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

PHONE: 507.625.6600

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Mr. Bruzek:

My last correspondence with you was in August, I believe you were going to forward to me documentation I had previously requested.

The following still has not been provided to me within 2 weeks:

1. Copies of the 2002 state and federal returns and turnover of the all the refunds.
2. Copy of the entire January 2003 bank statement for Eastwood Bank checking account and turnover of the balance as of the date of filing.
3. Documentation on how the \$1,300 was spent and verification that these were obligations of the debtor, not the girlfriend.

If I do not receive this information I would intend to bring a turnover. I am currently getting a status update from Mr. Etzler regarding Mr. Jackson's personal injury claim. I still have not received back from you the Stipulation for Settlement regarding the objection to debtor's claim of exemption on the personal injury claim. If it is not received in 2 weeks I will ask the Court to put the matter back on for a hearing.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

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RENEE C. RUBISH
KRISTINE HINDS MACLEAN•
JORUN GROE MEIERDING•
TANYA M. JOHNSON•

PHONE: 507.625.6600

April 15, 2004

Jeffrey M. Bruzek
Attorney at Law
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Mr. Bruzek:

The debtor still needs to provide me with the following:

1. Copies of the 2002 state and federal returns and turnover of all the funds.
2. Documentation on how the \$1,300 was spent and verification that these were obligations of the debtor, not the girlfriend.

In reviewing the information previously provided, I only received page 1 of his January 2003 bank statement so I cannot verify the balance in the account as of the date of filing.

It does not appear as though the debtor is being cooperative and it is my intention to proceed with a turnover action.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:am

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*ALSO ADMITTED IN SOUTH DAKOTA *ALSO ADMITTED IN IOWA *ALSO ADMITTED IN NORTH DAKOTA *ALSO ADMITTED IN NEW YORK



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING•
TANYA M. JOHNSON•

PHONE: 507.625.6600

September 15, 2004

Jeffrey M. Bruzek
Prescott and Pearson PA
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Mr. Bruzek:

Our office is in the process of preparing a turnover motion against Mr. Jackson. Verification is needed of where you came up with your dollar amount on the Stipulation to Settlement, a copy of which is enclosed.

According to the schedules, you listed the debtor had \$9,637.50 available under (d)(5). By my calculations of what was exempted, the debtor would only have \$6,712.50 of available unused (d)(5) but you changed the document to read \$5,754.38.

The following are the items and dollar amounts listed on the debtor's Schedule C:

Available (d)(5)	\$9,637.50
Remaining equity in 1990 Ford F250	\$725
3 Shotguns	\$1,000
30/6 Rifle	\$200
9mm	\$100
45 Ruger	\$300
2 Black Powder 44	\$300
54 Cal Musloader	\$300
Remaining Available (d)(5)	\$6,712.50

Please explain your calculation. Included in the turnover motion are 2002 refunds and bank account balances as ~~though~~ they were never verified or turned over.

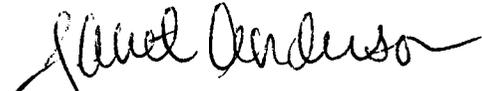
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September 15, 2004
Page 2

I would appreciate your immediate attention to this matter and look forward to hearing from you soon.

Sincerely,

A handwritten signature in cursive script that reads "Janet Anderson". The signature is written in black ink and is positioned above the typed name.

Janet Anderson
Legal Assistant to Charles W. Ries

Enc.



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING•
TANYA M. JOHNSON•

October 04, 2004

PHONE: 507.625.6600

Jeffrey M. Bruzek
Prescott and Pearson PA
443 8th Ave. NW, #208
PO Box 120088
New Brighton MN 55112

RE: Lee C. Jackson
Bankruptcy No: 03-30108-GFK

Dear Mr. Bruzek:

I am enclosing a new copy of the Stipulation to Settlement with our original figure included. I do not have a complete copy of the bank statement covering the date of filing to show what the balance on hand is; I only have page 1.

The debtor will need to turnover wages due him as of the date of filing of \$1,708.45.

If you want to negotiate this figure into the Stipulation to Settlement, please let me know and I will change the amount that he is allowed under (d)(5) and send you a new copy to sign.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

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*ALSO ADMITTED IN SOUTH DAKOTA *ALSO ADMITTED IN IOWA *ALSO ADMITTED IN NORTH DAKOTA

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 03-30108-GFK

Lee C. Jackson,

Debtor(s).

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Charles W. Ries, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on January 7, 2003, and is pending before this Court.
2. Charles W. Ries was appointed as Chapter 7 trustee on January 7, 2003.
3. The trustee made demand upon the debtor(s) for turnover of information needed to administer the bankruptcy case on March 6, 2003; May 1, 2003; June 23, 2003; July 3, 2003; August 4, 2003; December 23, 2003; April 15, 2004; and September 15, 2004, as shown in Exhibit A to the instant motion, and incorporated therein.
4. The debtor(s) failed to supply necessary information to the trustee in response to the turnover demand.
5. The debtor(s) continue to withhold information necessary to conclude administration of the bankruptcy case.

DISCUSSION

1. Turnover of Information.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to a complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; . . .

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtor(s)' failure to supply necessary information, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor(s) provide information regarding copies of 2002 state and federal returns and all refunds received; copies of bank statements covering the date of filing and turnover of the balance on hand in the accounts as of the date of filing; copy of check #3059 in the amount of \$1,300 that cleared on December 4, 2002 and all documentation relating to the payment, including invoices; and non-exempt wages due at the date of filing of \$1,708.45.

2. Forfeiture of Discharge.

Under 11 U.S.C. 727(a)(6)(A), the Code provides that if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 727(a)(6)(A) so that the debtor(s) will have an additional incentive to perform in a timely manner.

Based upon the foregoing the Chapter 7 trustee is entitled to an Order requiring that the debtor(s) turn over non-exempt funds, if any, and information requested in Exhibit A to the Motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the Order be designated a lawful Order pursuant to 11 U.S.C. 727(a)(6)(A).

Dated this 11th day of October, 2004.

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Trustee's Memorandum of Facts and Law in Support of Motion for Turnover with Exhibit A and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 03-30108-GFK

Lee C. Jackson,

Debtor(s).

DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 11th day of October, 2004, she served the Notice of Hearing and Motion for Turnover and Trustee's Memorandum of Facts and Law in Support of Motion for Turnover by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Lee C. Jackson
27966 550th St.
Pine Island, MN 55963

Jeffrey M. Bruzek
Prescott and Pearson PA
443 8th Ave. NW, #208
PO Box 120088
New Brighton, MN 55112

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janet Anderson

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Lee C. Jackson,
Debtor(s).

Case No: 03-30108-GFK

ORDER

The above captioned matter came before the Court on the _____ day of _____, 2004, on motion by the Chapter 7 trustee Charles W. Ries seeking an order requiring the debtor(s) to turn over information and certain assets.

Charles W. Ries appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtor(s) shall turn over to the trustee within thirty (30) days of the entry of this Order:
 - a. Copies of 2002 state and federal returns and all refunds received;
 - b. Copies of bank statements covering the date of filing and turnover of the balance on hand in the accounts as of the date of filing;
 - c. Copy of check #3059 in the amount of \$1,300 that cleared on December 4, 2002 and all documentation relating to the payment, including invoices.
 - d. Non-exempt wages due at the date of filing of \$1,708.45.
2. That this Order shall constitute a lawful Order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtor(s) fail to comply with its terms in a timely manner.
3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Charles W. Ries as Trustee for the estate within 10 days of entry of this Order.

Dated this _____ day of _____, 2004.

Honorable Gregory F. Kishel
United States Bankruptcy Judge