

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Michael John Wellner

Debtor.

Bky Case No. 03-03-30650
Chapter 7

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

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

1. Paul W. Bucher, Trustee for the bankruptcy estate of the above Debtor, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 3:00 p.m. on November 22, 2004, in Courtroom No. 228B, United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.

3. Because this Notice of Hearing is being delivered at least 21 days or mailed at least 24 days before the hearing date, any response to this motion must be filed and delivered not later than November 15, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than November 12, 2004, which is 10 days before the time set for the hearing (including Saturdays, Sundays and holidays).

**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. The petition commencing this chapter 7 case was filed on January 29, 2003. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 542(a). This motion is filed under Bankruptcy

Rules 9013 and 9014 and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5.

6. The Trustee requests that the court order the Debtor to immediately deliver to the Trustee the sum of \$69.36 representing the turnover of the balance in the F & M Bank checking account #218763.

7. The Trustee requests the court order the Debtor to immediately deliver to the Trustee the following documents and information: A copy of the deed and tax statement showing the assessed market value of the debtor's mother's home in Springfield, the mother's age and a copy of the closing bank statement from Minnwest Bank Redwood Falls.

8. Generally, all entities (other than custodians) in possession, custody or control, during the case, of property that the Trustee may use, sell or lease or that the Debtor may exempt must deliver the property to the Trustee and account for the property or the value of the property to the Trustee. 11 U.S.C. §542(a). The Trustee may use, sell or lease all property of the estate. Id. at §363.

9. The property, which the Trustee seeks to have turned over in this case, is property of the estate.

10. The Trustee has made requests for turnover numerous times from September 10, 2003 to present. The Debtor has not responded.

11. The undersigned does not anticipate a serious contest at this time and accordingly is not filing a separate memorandum of facts and law.

12. If oral testimony is necessary at the hearing, the Trustee will call Paul W. Bucher, Trustee in this case, P.O. Box 549, Rochester, MN 55903 and the Debtor: Michael John Wellner, 316 North Marshall, Springfield, MN 56087, the substance of whose testimony will relate to the information requested above in paragraphs #6 and #7 and any other matters, if

necessary.

WHEREFORE, the Trustee moves the court for an order that the Debtor immediately deliver to the Trustee the information requested above in paragraphs #6 and #7.

Dated: October 19, 2004

By: /e/ Paul W. Bucher
Paul W. Bucher, Trustee

206 S. Broadway, Suite 505
P.O. Box 549
Rochester, Minnesota 55903-0549
Telephone: (507) 288-9111

VERIFICATION

I, Paul W. Bucher, Trustee, 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: October 19, 2004

/e/ Paul W. Bucher
Paul W. Bucher, Trustee
206 South Broadway, Ste 505
Post Office Box 549
Rochester, Minnesota 55903

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UNSWORN CERTIFICATE OF SERVICE

I, Debra A. Stanton, declare under penalty of perjury that on October 19, 2004, I mailed copies of the following:

Notice of Hearing and Motion For Turnover Of Property and Proposed Order

by United States Mail, postage pre-paid, to each entity named below at the address stated below:

THOMAS W VAN HON
ATTORNEY AT LAW
19 SE 2ND AVENUE
PO BOX N
FAIRFAX MN 55332-0914

MICHAEL JOHN WELLNER
316 NORTH MARSHALL
SPRINGFIELD MN 56087

UNITED STATES TRUSTEE
1015 U S COURTHOUSE
300 SOUTH 4TH STREET
MINNEAPOLIS MN 55415

Executed on October 19, 2004.

Signed: *Debra A. Stanton*

Debra A. Stanton
DUNLAP & SEEGER, P.A.
P O BOX 549
ROCHESTER MN 55903-0549
(507) 288-9111

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ORDER

AT ST. PAUL, MINNESOTA.

The above matter came before the Court on November 22, 2004, on the Motion of the Trustee for Turnover of Property. Appearances, if any, were noted on the record.

Based upon the documents filed in this case, and the arguments of counsel,

IT IS HEREBY ORDERED, that within 10 days of this Order, Michael John Wellner shall deliver to the Trustee the following information:

1. A copy of the deed and tax statement showing the assessed market value of the debtor's mother's home in Springfield;
2. The mother's age; and
3. A copy of the closing bank statement from Minnwest Bank Redwood Falls.

Dated: _____

BY THE COURT:

Gregory F. Kishel
Chief U.S. Bankruptcy Judge