

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Johnson, Donn Corbett  
aka Donn C Johnson  
aka Corbett Johnson,  
Debtor.

Chapter 7  
Bky Case No. 03-30655

**NOTICE OF HEARING AND MOTION  
FOR TURNOVER OF PROPERTY AND  
INFORMATION OF THE ESTATE**

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TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR AND HIS ATTORNEY  
AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3:

1. Patti J. Sullivan, Trustee of the bankruptcy estate of the above-named 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 2:00 p.m. on October 20, 2004 in  
Courtroom No. 228A, at the United States Court House, 316 N Robert St., St. Paul, Minnesota  
55101.

3. Any response to this motion must be filed and delivered not later than 2:00 p.m.  
on October 15, 2004, which is three days before the time set for the hearing (excluding  
intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than  
October 12, 2004, which is seven days before the time set for the hearing (excluding  
intermediate Saturdays, Sundays and legal 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 Rules 4002 and 5005 and Local Rule 1070-1. This proceeding is a core  
proceeding. The petition commencing this Chapter 7 case was filed on January 30, 2003. The  
case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 521, 541, 542(a) and 704 and Bankruptcy Rule 9013 and Local Rule 6072-1. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. The Chapter 7 trustee requests turnover of property of the estate, and certain documents and information in order to properly administer the bankruptcy estate.

6. By correspondence dated February 25, 2004, re-mailed April 7, 2004 and June 18, 2004, attached hereto and incorporated herewith as Exhibit "A", the Trustee required turnover of information necessary to complete case administration. Despite numerous written requests to the Debtor's attorney to surrender information, the Debtor has failed to surrender and continues to withhold the following described information: the debtor's 2002 and 2003 income tax returns and refunds, if any.

7. The debtor is required to surrender all property of the estate to the trustee under 11 U.S.C. §521 (3) and (4). The provisions of 11 U.S.C. §542 require any entity in possession of property of the estate to turn such property over to the trustee.

8. Because the debtor failed to provide the requested information 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. In order to ensure that the debtor 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 not promptly comply with its provisions.

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

11. 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 to turnover to the Trustee the following: the debtor's 2002 and 2003 income tax returns and tax refunds, if any, within ten (10) days of the entry of an Order granting the Trustee's motion.
2. Directing that the failure to comply with the Order of the Court requiring a turnover be grounds for revocation of discharge under 11 U.S.C. §727(a)(6)(A).
3. For such other relief as the Court deems just and equitable.

Dated this 30<sup>th</sup> day of September 2004.

/e/ Patti J. Sullivan  
Patti J. Sullivan  
Trustee in Bankruptcy  
Attorney ID No. 170124  
P.O. Box 16406  
St. Paul, MN 55116  
(651) 699-4825

#### VERIFICATION

I, Patti J. Sullivan, Chapter 7 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 September 30, 2004.

Signed: /e/ Patti J. Sullivan  
Patti J. Sullivan, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Johnson, Donn Corbett  
aka Donn C Johnson  
aka Corbett Johnson,  
Debtor.

Chapter 7  
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**TRUSTEE'S MEMORANDUM OF FACTS AND LAW  
IN SUPPORT OF MOTION FOR TURNOVER  
OF PROPERTY AND INFORMATION**

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Patti J. Sullivan, Chapter 7 Trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned, and as grounds therefore would respectfully show the Court:

**FACTS**

1. This Chapter 7 case was filed on January 30, 2003, and is pending before this Court.
2. Patti J. Sullivan, was appointed as Chapter 7 Trustee on January 30, 2003.
3. The Trustee made demand upon the debtor for turnover of information needed to administer the bankruptcy case on February 25, 2004, April 7, 2004 and June 18, 2004, as shown in Exhibit "A" (attached) to the instant motion, and incorporated therein.
4. The debtor failed to supply necessary information to the Trustee in response to the turnover demand.
5. The debtor continues 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: Bently, 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 and property of the estate, administration of this bankruptcy case has been unduly delayed. The Trustee is entitled to an Order requiring that the debtor provides the following: the debtor's 2002 and 2003 income tax returns and tax refund, if any.

Forfeiture of Discharge.

Under 11 U.S.C. §727 (a)(6)(A), the Code provides that if debtor refuses 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 11 U.S.C. §727 (a)(6)(A) so that the debtor 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 provide information requested in Exhibit "A" attached to the Motion so that she 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 30<sup>th</sup> day of September, 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan  
Trustee in Bankruptcy  
Attorney ID No. 170124  
P.O. Box 16406  
St. Paul, MN 55116  
(651) 699-4825

**PATTI J. SULLIVAN**  
**UNITED STATES CHAPTER 7 PANEL TRUSTEE**

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

February 25, 2004

Donn Corbett Johnson  
143 Lake Street South  
Forest Lake, MN 55025-2604

Re: JOHNSON, DONN CORBETT  
AKA DONN C JOHNSON  
AKA CORBETT JOHNSON  
Bankruptcy No. 03-30655

**THIS IS A  
FOLLOW-UP  
ACCORDING TO OUR FILES, WE  
HAVE NOT RECEIVED A REPLY  
TO THIS LETTER, YOUR  
EARLY ATTENTION TO THIS  
MATTER WILL BE APPRECIATED**

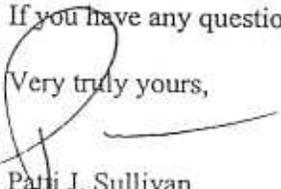
4/7/04 LC

Dear Mr. Johnson:

Please advise me as to the status of your 2002 and 2003 income tax returns. If they have not been filed, please let me know when you plan on filing your returns. If they have been filed, please forward a copy of them to me as soon as possible.

If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

  
Patti J. Sullivan  
Trustee in Bankruptcy

PJS:lde

Cc: John A. Hedback, Esq.  
Foster, Wentzell, Hedback, Ltd  
2855 Anthony Ln S  
Suite 201  
St. Anthony, MN 55418

EXHIBIT

"A"

**PATTI J. SULLIVAN**  
**UNITED STATES CHAPTER 7 PANEL TRUSTEE**

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

June 18, 2004

John A. Hedback, Esq.  
Foster, Wentzell, Hedback, Ltd  
2855 Anthony Ln S #  
Suite 201  
St. Anthony, MN 55418

Re: Johnson, Donn Corbett  
Bankruptcy Case No.: 03-30655

**NOTICE OF DEFAULT**

Dear Mr. Hedback:

I would appreciate a response to my letter of February 25, 2004 and remailed on April 7, 2004 requesting copies of the debtor's 2002 and 2003 income tax returns. Also, please have your client remit refunds, if any.

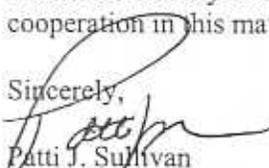
In addition it has come to my attention that there is a balance due on the amount owed to the bankruptcy estate for your client's non-exempt property. Your client agreed to pay \$1,875.00 for the 1997 John Deere 425 Garden Tractor pursuant to the Notice dated June 11, 2003. However, to date, only \$1,800.00 has been paid.

Please advise your client that if we have not received the 2002 and 2003 tax returns along with refunds and the balance of \$75.00 within ten (10) days of the date of this letter, we will have to apply to the court for an order directing your client to turn over the information and money which, if not complied with, could lead to a revocation of your client's discharge in bankruptcy. If your client's discharge is revoked, all of the debts that your client listed in his bankruptcy schedules will again be due and owing.

**IT IS IMPERATIVE THAT YOUR CLIENT RESPONDS TO THIS  
CORRESPONDENCE WITHIN THE TEN (10) DAY PERIOD.**

Please call me if you have any questions regarding the above. Thank you for your immediate cooperation in this matter.

Sincerely,

  
Patti J. Sullivan  
Trustee in Bankruptcy

PJS:jk

cc: Johnson, Donn Corbett

**EXHIBIT**

**"A"**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In the Matter of:

Johnson, Donn Corbett  
aka Donn C Johnson  
aka Corbett Johnson,  
Debtor.

Chapter 7  
Bky Case No. 03-30655

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UNSWORN CERTIFICATE OF SERVICE

I, Joeline Kissinger, declare under penalty of perjury that on the 30<sup>th</sup> day of September, 2004, I mailed a copy of the attached Notice of Hearing and Motion for Turnover of Property and Information of the Estate, Trustee's Memorandum of Law and proposed Order by first class mail postage prepaid to each entity named below or on the statement attached at the address stated below or in said attachment for each entity:

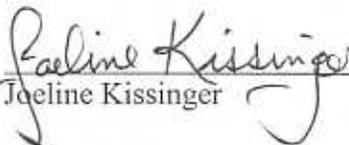
John A. Hedback  
Foster, Wentzell, Hedback, Ltd  
2855 Anthony Ln S  
Suite 201  
St. Anthony, MN 55418

United States Trustee  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Donn Corbett Johnson  
143 Lake Street S  
Forest Lake, MN 55025-2604

Realtors Credit Union of Minneapolis  
c/o Stewart, Zlmen & Jungers, Ltd.  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

Executed on this 30<sup>th</sup> day of September, 2004.

  
Joeline Kissinger

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Johnson, Donn Corbett  
aka Donn C Johnson  
aka Corbett Johnson,  
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Chapter 7  
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**ORDER**

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The above captioned matter came before the Court on October 20, 2004, on motion by the Chapter 7 Trustee Patti J. Sullivan in this case, seeking an order requiring the debtor to turnover information and property of the estate.

Patti J. Sullivan 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 shall turn over to the Trustee the following: the debtor's 2002 and 2003 income tax returns and tax refunds, if any, within ten (10) days of the entry of this Order.
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 fail to comply with its terms in a timely manner.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2004.

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Dennis D. O'Brien  
United States Bankruptcy Judge