

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

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In Re:

Case No. 03-35514

Michael & Peggy Fugleberg,  
  
Debtor(s).

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**NOTICE OF HEARING, VERIFIED MOTION FOR TURNOVER  
TO THE TRUSTEE OF PROPERTY OF THE ESTATE AND  
MEMORANDUM OF LAW IN SUPPORT OF MOTION**

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TO: Michael & Peggy Fugleberg, 2022 James Avenue, St. Paul, MN 55105  
Philip N. Scheide, 1500 West McAndrews Road, #228, Burnsville, MN 55337  
United States Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415

1. Mary Jo A. Jensen-Carter, Trustee of the bankruptcy estate of the above-named Debtor(s) (“Trustee”), moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on **September 27, 2004 at 11:15 a.m.**, before the Honorable Dennis D. O’Brien, Judge of the U.S. Bankruptcy Court, in Courtroom Number 228A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than September 22, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than September 16, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays).

**IF A RESPONSE IS NOT TIMELY FILED, THE COURT, IN ITS DISCRETION, MAY GRANT THE RELIEF REQUESTED 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. The petition commencing this case was filed on August 11, 2003 and is now pending in this Court.
5. This motion arises under 11 U.S.C. §§ 541(a) and 542(a). This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The Trustee requests relief with respect to turnover of the following non-exempt assets:
  - 2003 state and federal income tax returns and refunds, if any
  - 2000 state and federal income tax returns and refunds, if any
  - 1999 state and federal income tax returns and refunds, if any
  - 1998 state and federal income tax returns and refunds, if any
  - Remaining non-exempt cash in the amount of \$25.00
  - Non-exempt Highgrove Credit Union bank account balance of \$422.34
  - 1990 Honda Civic valued in the debtors' schedules at \$250.00

**MOTION FOR TURNOVER**

6. The 341 meeting of creditors was held on September 15, 2003. The Trustee has requested turnover at the 341 meeting and by letters. See copies of the Trustee's October 13, 2003, January 12, 2004, April 27, 2004, and May 14, 2004 letters to the Debtors and/or their attorney attached hereto as Exhibits A, B, C & D. The Trustee has not received the requested items. In order to fully administer the estate, the Trustee must obtain the requested items.

7. The Trustee also requests attorney fees in the amount of \$500.00, for the Trustee's costs and expenses in bringing this motion.

#### MEMORANDUM OF LAW

The law pertinent to this motion is found in 11 U.S.C. §§ 541(a) and 542(a). 11 U.S.C. § 541(a) provides that:

The commencement of a case under § 301, 302 or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. § 542 provides that:

- (a) Except as provided in subsections (c) or (d) of this section, an entity other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under Section 363 of this title, or that the debtor may exempt under Section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

The Trustee requests that the Court order the Debtors to turn over the requested non-exempt assets listed above.

WHEREFORE, the Trustee requests that this Court, issue an order that Debtors turn over the following assets:

- 2003 state and federal income tax returns and refunds, if any
- 2000 state and federal income tax returns and refunds, if any
- 1999 state and federal income tax returns and refunds, if any
- 1998 state and federal income tax returns and refunds, if any
- Remaining non-exempt cash in the amount of \$25.00
- Non-exempt Highgrove Credit Union bank account balance of \$422.34
- 1990 Honda Civic valued in the debtors' schedules at \$250.00

The Trustee also requests attorney's fees in the amount of \$500.00 payable from Debtors.

Dated: September 1, 2004.

BUCKLEY & JENSEN

By /e/ Mary Jo A. Jensen-Carter  
Mary Jo A. Jensen-Carter, #186041  
1339 East County Road D  
Vadnais Heights, MN 55109  
(651) 486-7475

**VERIFICATION**

I, Mary Jo A. Jensen-Carter, Trustee and movant named in the motion, declare under penalty of perjury that the facts contained in the foregoing motion are true and correct to the best of my knowledge, information and belief.

Dated: September 1, 2004.

/e/ Mary Jo A. Jensen-Carter  
Mary Jo A. Jensen-Carter, Trustee

**Mary Jo A. Jensen-Carter  
Trustee in Bankruptcy  
1339 East County Road D  
Vadnais Heights, MN 55109**

**Telephone (651) 486-7475  
Facsimile (651) 486-7468**

October 13, 2003

Philip N. Scheide  
Attorney at Law  
1500 West McAndrews Road, #228  
Burnsville, MN 55337

**RE: Michael & Peggy Fugleberg  
Bankruptcy No. 03-35514**

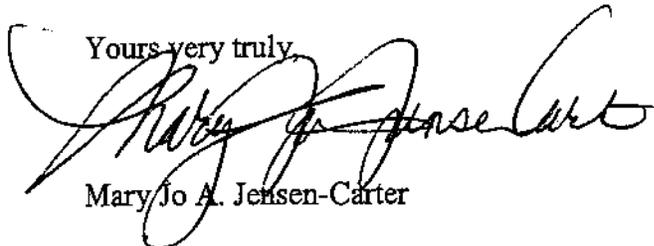
Dear Mr. Scheide:

Thank you for sending me the debtors' Amended Schedules A, B and C. In light of the change to the state exemptions, there are several items that are non-exempt. Those items include the following:

- Cash of \$50
- Highgrove Credit Union account balance of \$422.34
- 1990 Honda Civic valued at \$250
- 2003 state and federal income tax refunds

Please ask the debtors to turnover the cash and bank account balances to me. In addition, if they are interested in purchasing the 1990 Honda Civic, they should send me a check for \$250. Finally, I am enclosing Stipulations related to the debtors 2003 tax refunds. Please ask the debtors to sign all four copies and return three of them to me. I would appreciate receiving the tax refund stipulations and the funds for the non-exempt assets within ten days. Thank you.

Yours very truly,



Mary Jo A. Jensen-Carter

MJJ:ag  
enclosure

**EXHIBIT A**

**Buckley & Jensen**  
*Attorneys at Law*  
1339 East County Road D  
Vadnais Heights, Minnesota 55109  
Telephone (651) 486-7475  
Facsimile (651) 486-7468  
email: buckleyandjensen@aol.com

*Mary Jo A. Jensen-Carter*  
*Sheridan J. Buckley (Ret.)*

*Ann M. Gagner, CBA/Secretary*

January 12, 2004

Michael & Peggy Fugleberg  
2022 James Avenue  
St. Paul, MN 55105

**RE: 2003 State and Federal Income Tax Returns**

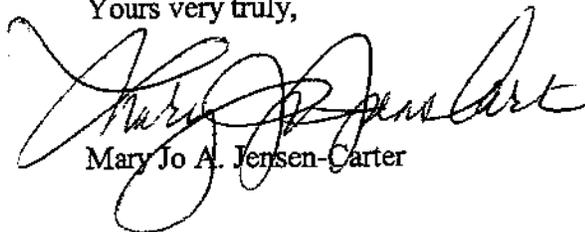
Dear Mr. & Mrs. Fugleberg:

This is the office of the trustee of your bankruptcy estate who examined you at the First Meeting of Creditors.

A portion of your **2003 FEDERAL AND STATE INCOME TAX REFUNDS** belongs to your bankruptcy estate. You have previously agreed to provide complete copies of all tax returns to the trustee as soon as you file said returns with the Internal Revenue Service and the Minnesota Department of Revenue. **You must provide said returns on or before April 15, 2004.** If you file an extension, you must provide a copy of your application for extension by April 15, 2004. **No refunds will be sent to you until the trustee receives a copy of all of your returns. Additionally, if you receive any of your refunds, you must turn them over to the trustee in full.**

If you cash any refunds you do receive and spend the money, you may incur penalties for conversion of bankruptcy assets. Please be informed that although you may have received your discharge, you must comply with all orders of the Court or your discharge may be revoked. If your discharge is revoked, all of the debts that you listed in your bankruptcy schedules will again be due and owing.

Yours very truly,



Mary Jo A. Jensen-Carter

MJJ:ag

cc: Philip N. Scheide

EXHIBIT B

**Mary Jo A. Jensen-Carter**  
**Trustee in Bankruptcy**  
**1339 East County Road D**  
**Vadnais Heights, MN 55109**

**Telephone (651) 486-7475**  
**Facsimile (651) 486-7468**

April 27, 2004

Michael & Peggy Fugleberg  
2022 James Avenue  
St. Paul, MN 55105

**RE: 2003 Tax Refunds**

Dear Mr. & Mrs. Fugleberg:

As you know, I am the trustee of your Chapter 7 bankruptcy estate. At your first meeting of creditors, I notified you that you would need to send me copies of your 2003 state and federal income tax returns when the returns were completed. At that time, I also told you that all or a portion of the refunds would be property of your bankruptcy estate and warned you not to spend any refunds you received until you had accounted to me for them.

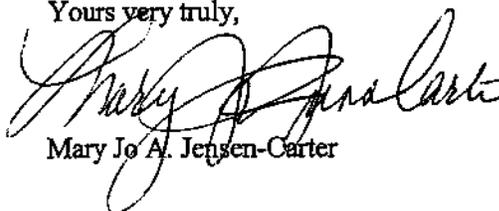
In January, 2004, I sent you a reminder letter asking that you send me copies of your 2003 state and federal income tax returns. Your tax returns should have been filed by April 15, 2004. To date, I have not received copies of your tax returns.

Unless I receive copies of your tax returns or documentation evidencing the fact that you filed for an extension of time in which to file the returns within seven days of the date of this letter, I intend to move the Court for an Order requiring you to turnover the tax returns. If you do not comply with that Court Order, I intend to file an action to revoke your discharge.

If your discharge is revoked, all of the debts that you listed in your bankruptcy schedules will again be due and owing.

**IT IS IMPERATIVE THAT YOU RESPOND TO THIS CORRESPONDENCE WITHIN THE SEVEN DAY PERIOD.**

Yours very truly,



Mary Jo A. Jensen-Carter

cc: Philip N. Scheide

EXHIBIT C

**Mary Jo A. Jensen-Carter  
Trustee in Bankruptcy  
1339 East County Road D  
Vadnais Heights, MN 55109**

**Telephone (651) 486-7475  
Facsimile (651) 486-7468**

May 14, 2004

Philip N. Scheide  
Attorney at Law  
1500 West McAndrews Road, #228  
Burnsville, MN 55337

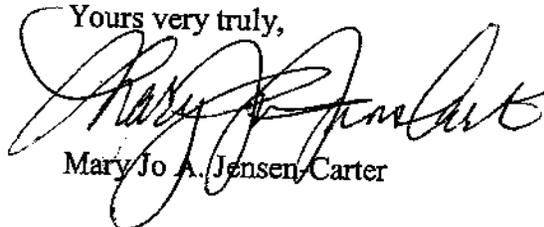
**RE: Michael & Peggy Fugleberg  
Bankruptcy No. 03-35514**

Dear Mr. Scheide:

As you know, I am the Chapter 7 Trustee in the referenced matter. I was recently contacted by the Internal Revenue Service with respect to the debtors' tax returns. Based on the information provided to me by the IRS, it appears that the debtors have not filed tax returns for 1998, 1999, 2000 and 2003. The debtors must file those returns within 30 days. To the extent that there are any refunds due prior to 2003, they will be property of the debtors' bankruptcy estate.

In addition, I note that the debtors have only paid the estate \$25 out of the \$722.34 that is due to the estate. Unless the remaining \$697.34 is paid within ten days, I intend to file a motion for turnover. If I am forced to file the motion for turnover, I will ask that the Court award me attorney's fees for the debtors failure to comply.

Yours very truly,



Mary Jo A. Jensen-Carter

MJJ:ag

cc: Michael & Peggy Fugleberg  
2022 James Avenue  
St. Paul, MN 55105

EXHIBIT D

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

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In Re:

Case No. 03-35514

Michael & Peggy Fugleberg,

Debtor(s)

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Ann M. Gagner, declare under penalty of perjury that on September 1, 2004, I served copies of the attached *Notice of Hearing, Verified Motion for Turnover to the Trustee of Property of the Estate, Memorandum of Law in Support of Motion and a proposed Order* by first class U.S. Mail, to the following parties:

Michael & Peggy Fugleberg 2022 James Avenue St. Paul, MN 55105	United States Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415
Philip N. Scheide Attorney at Law 1500 West McAndrews Road, #228 Burnsville, MN 55337	

Executed on: September 1, 2004.

Signed: /e/ Ann M. Gagner  
Ann M. Gagner  
Buckley & Jensen  
1339 East County Road D  
Vadnais Heights, MN 55109

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION**

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In Re:

Case No. 03-35514

Michael & Peggy Fugleberg,

Debtor(s).

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**ORDER**

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The above-captioned matter came on before this Court on the motion of the Trustee, Mary Jo A. Jensen-Carter, for the turnover of the Debtors' non-exempt assets.

Based upon all of the files, records and proceedings herein,

**IT IS HEREBY ORDERED:**

1. The Trustee's Motion for Turnover is granted.
2. The Debtors shall turn over the following items to the Trustee within seven days of this Order:
  - 2003 state and federal income tax returns and refunds, if any
  - 2000 state and federal income tax returns and refunds, if any
  - 1999 state and federal income tax returns and refunds, if any
  - 1998 state and federal income tax returns and refunds, if any
  - Remaining non-exempt cash in the amount of \$25.00
  - Non-exempt Highgrove Credit Union bank account balance of \$422.34
  - 1990 Honda Civic valued in the debtors' schedules at \$250.00
3. The Debtors shall also pay the Trustee \$500.00 as and for attorney's fees awarded in bringing this motion.

Dated: \_\_\_\_\_, 2004.

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Dennis D. O'Brien  
United States Bankruptcy Judge