

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

DAVID W. NICKEL

BKY CASE NO 03-36573 GFK
CHAPTER 13

Debtor(s)

NOTICE OF HEARING AND MOTION OBJECTING TO CLAIM

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Michael J. Farrell, Chapter 13 Trustee (the Trustee), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 11:30 a.m. on October 19, 2004, in the Courtroom 228B - 2nd Floor, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and delivered not later than October 12, 2004 which is seven days before the time set for the hearing, filed and served by mail not later than October 9, 2004 which is ten days before the time set for the hearing, pursuant to Local Bankruptcy Rule 9006-1(b). **UNLESS A RESPONSE OPPOSING THIS 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 is a core proceeding. The petition commencing this Chapter 13 case was filed on January 19, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 502 and Bankruptcy Rule 3007. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3007-1, 9006-1, 9013-1 through 9013-5, and such other Local rules as may pertain. Movant requests relief with respect to the disallowance of Claim No. 5 (the Claim).

6. Marlow Nickel (the Claimant) filed the Claim on or about April 23, 2004 as an unsecured non-priority claim in the amount of \$7567.00. A copy of the Claim is attached. The Debtor testified at the 341 investigation that this claim had been paid in full.

WHEREFORE, the Trustee moves the Court for an order disallowing Claim No. 5 and such other relief as may be just and equitable.

Dated September 7, 2004

/s/ Michael J. Farrell

Michael J. Farrell, Standing Trustee
PO Box 519
Barnesville, MN 56514
(218) 354-7356

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA (ST. PAUL)**

PROOF OF CLAIM

Name of Debtor
DAVID W NICKEL

Case Number
03-36573 - GFK

RECEIVED
 04 APR 23 AM 9:49
 U.S. BANKRUPTCY COURT
 ST. PAUL, MN

Name of Creditor (The person or other entity to whom the debtor owes money or property):
MARLOW NICKEL
Name and Address where notices should be sent:

MARLOW NICKEL
46060 CTY RD 53
JEFFERS MN 56145

- Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- Check box if you have never received any notices from the bankruptcy court in this case.
- Check box if the address differs from the address on the envelope sent to you by the court.

Telephone Number:

Account or other number by which creditor identifies debtor:

Check here if replaces this claim amends a previously filed claim, dated _____

1. Basis for Claim

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other _____

- Retiree benefits as defined in 11 U.S.C. §1114(a)
- Wages, salaries, and compensation (fill out below)
Your SS #: _____
Unpaid compensation for services performed from _____ to _____
(date) (date)

5

2. Date debt was incurred:

Sept 30 196 ~ Sept 30 '02

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed:

\$ 7567.00

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other _____

Value of Collateral: \$ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim.

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ _____

Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- Up to \$ 2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

**Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

SEND ORIGINAL COPY TO:
 U.S. BANKRUPTCY COURT
 200 U.S. COURTHOUSE
 316 NORTH ROBERT STREET
 ST. PAUL, MN 55101

Date
4/20/04

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

Marlow D. Nickel

FOR PAYMENT
 SEND COMPLETE COPY TO:
 CHAPTER 13 TRUSTEE
 (SEE NOTICE OF COMMENCEMENT
 CASE FOR NAME AND ADDRESS
 OF CHAPTER 13 TRUSTEE)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

DAVID W. NICKEL

BKY CASE NO 03-36573 GFK
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Debtor(s).

The undersigned, being an employee of the standing Chapter 13 Trustee, declares that on the date indicated below, I served the following:

Notice of Hearing and Trustee's Motion Objecting to Claim
and Unsworn Declaration of Proof of Service

Upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at Barnesville, Minnesota, addressed to each of them as follows:

Debtor(s):

DAVID W. NICKEL
608 2ND AVE. W.
LAMBERTON, MN 56152

Debtor's Attorney:

IAN T. BALL
12 S. 6TH ST., SUITE 326
MINNEAPOLIS, MN 55402

Additional Copy(s) addressed to:

MARLOW NICKEL
46060 COUNTY ROAD 53
JEFFERS, MN 56145

UNITED STATES TRUSTEE
1015 U.S. COURTHOUSE
300 W. 4TH ST.
MINNEAPOLIS, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 7, 2004

/s/ Belinda D. Kurtz
Belinda D. Kurtz
Chapter 13 Office

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

DAVID W. NICKEL

BKY CASE NO 03-36573 GFK
CHAPTER 13

Debtor(s).

This matter came before the Court on October 19, 2004 on a Motion Objecting to a Claim by the Chapter 13 Trustee. The appearances are as noted on the record. The court made its findings and conclusion on the record. Based on the Local and Federal Rules of Bankruptcy Procedure, it is

HEREBY ORDERED:

CLAIM #5 – MARLOW NICKEL

\$7567.00

Be disallowed in its entirety.

Dated: _____

Judge Gregory F. Kishel
U.S. Bankruptcy Judge