

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No.

Barbara Jo Mitchell

Defendant(s).

COMPLAINT TO REVOKE DISCHARGE

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, for his complaint against Barbara Jo Mitchell, defendant debtor, states and alleges that:

1. This complaint is filed under FED. R. BANKR. P. 7001(4) and seeks an order revoking the debtor's discharge pursuant to 11 U.S.C. § 727(d)(3).
2. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.
3. The United States Trustee has standing to commence this adversary proceeding pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. §§ 307 & 727(d).
4. Upon information and belief, the defendant, Barbara Jo Mitchell, is a resident of Minnesota.
5. The defendant debtor commenced the present bankruptcy case on June 11, 2003. *See*

Att. Ex. 1 (BANCAP Report). A discharge was granted on September 15, 2003. *See Id.* The case has not been closed as of the date this complaint was prepared by the undersigned.

6. On April 22, 2004, the Chapter 7 Trustee filed a motion demanding that the debtor turnover the following property of the estate: copies of 2003 state and federal tax returns. *See Att. Ex. 2 (Affidavit of Trustee in Support of Complaint to Revoke Discharge).*

7. On May 26, 2004, the Bankruptcy Court entered an Order directing the debtor to turnover the property of the estate listed in paragraph 6 of this complaint on or before June 7, 2004. *Id.* (Att. Ex. B).

8. As of this date, the debtor has failed to comply with the Bankruptcy Court's Order, dated May 26, 2004. *Id.*

9. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court.

10. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.

WHEREFORE, the Plaintiff requests that this Court enter judgment revoking the defendant debtor's discharge herein, together with such further relief as the Court seems just.

Dated: July 7, 2004

HABBO G. FOKKENA
UNITED STATES TRUSTEE
REGION 12

BY: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
Office of the United States Trustee
Suite 1015 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415
(612) 664-5500
IA ATTY NO. 14014

Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (St. Paul)

Bankruptcy Petition #: 03-34151

Date filed: 6/11/03
Assigned to: CHIEF JUDGE GREGORY F KISHEL
Chapter 7 voluntary individual no asset

=====

* Attorneys *

BARBARA JO MITCHELL
2827 WIMBLEDON RIDGE
WOODBURY, MN 55125
SSN: XXX-XX-3605
* Debtor *

BECKY A MOSHIER
2233 UNIVERSITY AVE W STE 420
ST PAUL, MN 55114
651-645-1211

U S TRUSTEE
1015 U S COURTHOUSE
300 S 4TH ST
MINNEAPOLIS, MN 55415
* U S Trustee *

MICHAEL J IANNACONE
8687 EAGLE POINT BLVD
LAKE ELMO, MN 55042
* Trustee *

Proceedings include all events.

- 6/11/03 1 Voluntary Petition all schedules and statements.
Electronically filed by Becky A Moshier on: Wed Jun 11
10:21:59 2003 (A167) [EOD 06/11/03]
- 6/11/03 2 Declaration of Original Signature Re: [1-1] Electronic
Voluntary Petition . (A167) [EOD 06/11/03]
- 6/11/03 -- Added U S TRUSTEE. (auto) [EOD 06/11/03]
- 6/11/03 3 Creditor list supplied by debtor. (A167) [EOD 06/11/03]
- 6/11/03 -- Filing Fee Paid in Full Re: [1-1] Electronic Voluntary
Petition (Filing Fee \$ 200.00 Receipt # 137239) (jt)
[EOD 06/11/03]
- 6/11/03 4 Appointment of Interim Trustee and Approval of Bond. (jt)
[EOD 06/11/03]

Proceedings include all events.

03-34151 In re: BARBARA JO MITCHELL

6/11/03 5 Notice of Meeting of Creditors under 11 USC 341(a)
Scheduled For 10:30 7/14/03 At St. Paul Last Day To Oppose
Discharge: 9/12/03 Certificate of Service. (jt)
[EOD 06/11/03]

8/13/03 6 Notice of Hearing and Motion by Creditor WELLS FARGO HOME
MORTGAGE INC (REITER) For Relief From Stay . Hearing
Scheduled for 10:30 9/15/03 at Courtroom 228B (St. Paul) ,
Filing fee paid \$ 75.00, Record: E13538; Affidavit,
Memorandum of Law, Proof of Service, Proposed Order. (A122)
[EOD 08/13/03]

8/14/03 -- Filing Fee Paid in Full Re: [6-1] Motion For Relief From
Stay by WELLS FARGO HOME MORTGAGE INC (REITER) (Filing Fee
\$ 75.00 Receipt # 138921) (dlt) [EOD 08/14/03]

9/15/03 7 Order Discharging Debtor BARBARA JO MITCHELL . Certificate
of Service. (rmg) [EOD 09/15/03]

9/15/03 -- ELECTRONIC Minutes Re: [6-1] Motion For Relief From Stay by
WELLS FARGO HOME MORTGAGE INC. MOTION GRANTED BY DEFAULT.
(jrb) [EOD 09/15/03]

9/15/03 8 ELECTRONIC Order Granting [6-1] Motion For Relief From Stay
by WELLS FARGO HOME MORTGAGE INC. (GFK) COURT'S
CERTIFICATE OF MAILING. (jrb) [EOD 09/15/03]

4/22/04 9 Notice of Hearing and Motion by Trustee MICHAEL J IANNAcone
to Turn Over Property . Hearing Scheduled for 2:30
5/26/04 at Courtroom 228B (St. Paul) Affidavit, Proof of
Service, Proposed Order. ..DOCUMENTS NOT SUBMITTED: ,
Memorandum of Law ..END DOCUMENTS NOT SUBMITTED. (A63)
[EOD 04/22/04]

5/26/04 -- ELECTRONIC Minutes Re: [9-1] Motion to Turn Over Property
by MICHAEL J IANNAcone. MOTION GRANTED BY DEFAULT. (jrb)
[EOD 05/26/04]

5/26/04 10 ELECTRONIC Order Granting [9-1] Motion to Turn Over
Property by MICHAEL J IANNAcone. (GFK) COURT'S
CERTIFICATE OF MAILING. (jrb) [EOD 05/26/04]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Barbara Jo Mitchell,

Bky. No. 03-34151

Debtor.

AFFIDAVIT OF MICHAEL J. IANNAZONE

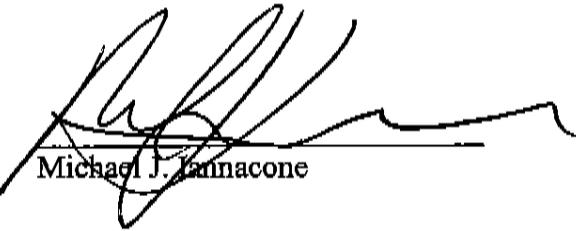
STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

Michael J. Iannacone, being first duly sworn on oath, deposes and states:

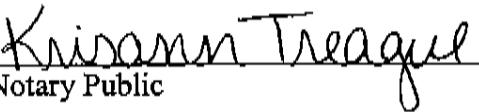
1. I was appointed as the Chapter 7 Trustee to oversee the administration of the above-captioned case on June 11, 2003.
2. On January 9, 2004, a letter was sent to the debtor's attorney and the debtor requesting that the debtor turn over copies of her 2003 state and federal income tax returns (the "Returns"). A copy of the letter is attached hereto as Exhibit A.
3. On April 21, 2004, a Motion for Turnover of the debtor's Returns was filed and served on the debtor's attorney and the debtor.
4. On May 26, 2004, the Court granted the Motion for Turnover. A copy of the Court's Order (the "Order") is attached hereto as Exhibit B. Pursuant to the Order, the debtor was required to turn over the requested Returns on or before June 7, 2004. The debtor's failure to comply with the Order is grounds for revocation of discharge pursuant to 11 U.S.C. §727(a)(6)(A).
5. On June 21, 2004, a letter was sent by first class mail to the debtor's attorney enclosing a copy of the Order and requesting compliance with the Order by June 28, 2004. A copy of the letter is attached hereto as Exhibit C.

6. To date, the debtor has not provided the Trustee with copies of Returns.

FURTHER, AFFIANT SAYETH NOT.


Michael J. Pinacone

Subscribed and sworn to before me
this 6th day of July, 2004.


Notary Public



IANNACONE LAW OFFICE
ATTORNEYS AT LAW
8687 EAGLE POINT BLVD.
LAKE ELMO, MINNESOTA 55042

MICHAEL J. IANNACONE

HEATHER L. IANNACONE

TELECOPIER (651) 297-6187

TELEPHONE (651) 224-3361

January 9, 2004

EMAIL-HLI@IANNACONE.COM

Barbara Jo Mitchell
2827 Wimbledon Ridge
Woodbury, MN 55125

Re: Bankruptcy 03-34151
2003 State and Federal Income Tax Returns

Dear Ms. Mitchell:

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** may be assets of your bankruptcy estate and may not be cashed by you, nor may you apply any amount of the refunds to your next year's taxes.

You must send to me complete copies of your 2003 Federal and State Income Tax returns including copies of all W-2's. We will examine your returns and, if any portion of your refund belongs to your bankruptcy estate, we will provide you with a letter computing the amount due to the trustee upon receipt of the refunds. If you do not file your returns in a timely fashion and file an extension, please provide us with a copy of that extension.

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 you cash your refund checks and spend the money, you may incur penalties for conversion of bankruptcy assets.

Very truly yours,



Heather L. Iannacone

cc: Becky A. Moshier, Esq.

EXHIBIT A

MAY 28 2004

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re: Bankruptcy 03-34151
Chapter 7 Case

Barbara Jo Mitchell,

Debtor.

ORDER

At St. Paul, Minnesota.

The above-entitled matter came on for hearing before the undersigned Judge of Bankruptcy Court upon the motion of the trustee for an Order directing the debtor to surrender property to the trustee.

Michael J. Iannacone, Esq., appeared on behalf of the motion and other appearances are as noted in the record.

Upon all the files, records and proceedings herein the debtor is hereby ordered and directed to surrender and deliver to the trustee at 8687 Eagle Point Blvd., Lake Elmo, Minnesota the following described property on or before June 7, 2004.

2003 State and Federal Income Tax Returns

Dated this 26th day of May, 2004



Gregory F. Kishel, Chief Judge
United States Bankruptcy Court

NOTICE OF ELECTRONIC ENTRY AND
FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 5/26/04
Lori Vosejka, Acting Clerk, By jrb

10-1

EXHIBIT

B

IANNAcone LAW OFFICE
ATTORNEYS AT LAW
8687 EAGLE POINT BLVD.
LAKE ELMO, MINNESOTA 55042

MICHAEL J. IANNAcone

HEATHER L. IANNAcone

TELECOPIER (651) 297-6187

TELEPHONE (651) 224-3361

EMAIL-HLI@IANNAcone.COM

June 21, 2004

Becky A. Moshier, Esq.
2233 University Ave. W. #420
St. Paul, MN 55114

Re: Barbara Jo Mitchell
Bankruptcy 03-34151

Dear Ms. Moshier:

Enclosed is a copy of the Order dated May 26, 2004 requiring the debtor to turn over his 2003 state and federal income tax returns. To date, I have not received those returns and request compliance with the order by June 28, 2004.

Very truly yours,



Heather L. Iannacone

HLI:knt
Enclosure

EXHIBIT C

VERIFICATION

I, Sarah J. Wencil, a trial attorney for the United States Trustee, the petitioner herein, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on July 7, 2004

/s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
Suite 1015 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415
(612) 664-5500
IA ATTY NO. 14014