

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

KIMBERLY E. VANALSTINE

Chapter 7

Debtors

BK 02-32445

HABBO G. FOKKENA,
United States Trustee

Plaintiff,

vs.

Adv. No. 04-3319

KIMBERLY E. VANALSTINE

Defendants.

MOTION FOR DEFAULT JUDGMENT

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Michael R. Fadlovich, hereby moves the court for a default judgment to be entered against Kimberly E. Vanalstine (the defendant or debtor) on the following grounds:

1. The United States Trustee, by his undersigned attorney, moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 10:00 a.m. before the Honorable Gregory F. Kishel, Chief U.S. Bankruptcy Judge, on Wednesday, October 27, 2004, in Courtroom No. 228B, U.S. Bankruptcy Court, 200 U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than October 22, 2004, which is three days before the date set for the hearing, (Excluding Saturdays, Sundays or Holidays) or

filed and served by mail not later than October 18, 2004, which is seven days before the time set for the hearing (Excluding Saturdays, Sundays or Holidays). See Loc. R. Bankr. P. 9006-1(b).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The United States Trustee filed the above named complaint under FED. R. BANKR. P. 7001(4) to seek a revocation of the defendant's discharge in her chapter 7 bankruptcy case pursuant to 11 U.S.C. § 727(a)(6) and 727(d)(3) on July 20, 2004.

5. Summons was also issued on July 20, 2004, by the United States Bankruptcy Court, District of Minnesota, directing the defendant to file an answer with the United States Bankruptcy Court within thirty (30) days pursuant to the Bankruptcy Rules. See Att. Ex. 1 (Copy of Court Docket in Adv. Case No. 04-3319). The United States Trustee served said complaint and summons to the defendant by U.S. mail on July 20, 2004. The debtor accepted service of the summons and complaint as evidenced by a signed receipt which was returned to the U.S. Trustee. See Att. Ex. 2 (copy of certificate of service).

6. An answer to the United States Trustee's complaint was due on approximately August 20, 2004. FED. R. BANKR. P. 7012(a).

7. As of the date of this Application, the defendant has not filed an answer to the United States Trustee's complaint. See Affidavit of Default.

8. The United States Trustee made the following allegation in his complaint:

A. The defendant/debtor, Kimberly E. Vanalstine commenced this bankruptcy case on July 1, 2002, by the filing of a voluntary petition under chapter 7. Mary Jo A. Jensen-Carter was appointed chapter 7 trustee. On October 8, 2002, the debtor received a general

discharge of her debts pursuant to §727(a).

B. The bankruptcy case had not been closed at the time this complaint was prepared and filed.

C. At the time the debtor's original chapter 7 filing, she may have been entitled to income tax refunds from calendar year 2002. The tax refund was property of the estate as provided for in 11 U.S.C. §541(a)(5).

D. The chapter 7 trustee, Mary Jo A. Jensen-Carter, moved the court for an order to require the defendant to turn over copies of her state and federal income tax returns and her tax refunds. On September 24, 2003, the court granted the turnover motion and ordered the defendant to turn over copies of her tax returns, as well as any tax refund, within five days. See Order dated September 24, 2004, Docket #10. See also, July 14, 2004, affidavit of Mary Jo A. Jensen-Carter, including copy of the order, attached to the U.S. Trustee's complaint. The court's order required the debtor (defendant) to turn over both the tax returns and the tax refund within five days. The order also required the Debtor to pay the trustee \$500.00 for attorney fees for bringing the turnover motion. The five day deadline for compliance by the debtor ended on September 29, 2003.

E. The defendant failed to turn over the tax returns and refunds and further failed to pay the trustee \$500.00 in attorney fees, all as required by the court's order.

F. Pursuant to 11 U.S.C. § 541, the income tax refunds due to defendant from the taxing authorities were at all times property of the bankruptcy estate.

G. By refusing to turn over the tax returns and refund, the defendant acquired property of the estate, or acquired property that would have been property of the estate, and knowingly

Return to Search Results Page

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

Adversary Proceeding #: 04-3319

Date filed: 7/20/04

Assigned to: CHIEF JUDGE GREGORY F KISHEL

Related Bankruptcy Case #: 02-32445

In Re: KIMBERLY E VANALSTINE,

Demand: \$0,000

Nature of Suit: 424

=====

* Attorneys *

HABBO G FOKKENA U S TRUSTEE
C/O OFFICE OF US TRUSTEE
300 S FOURTH ST STE 1015
MINNEAPOLIS, MN 55415
* Plaintiff *

MICHAEL R FADLOVICH
US TRUSTEE OFFICE
300 S 4TH ST STE 1015
MINNEAPOLIS, MN 55415
612-664-5500

v.

KIMBERLY E VANALSTINE
46833 GOOSE CREEK RD
HARRIS, MN 55032
SSN: XXX-XX-1316
* Defendant *

Exhibit #1

Proceedings include all events.

04-3319 In re: HABBO G FOKKENA, U S TRUSTEE and KIMBERLY E

7/20/04 1 Complaint (04-3319) HABBO G FOKKENA, U S TRUSTEE vs. KIMBERLY E VANALSTI. NOS 424 Objection To Discharge (727) by Michael Fadlovich on: Tue Jul 20 13:29:10 2004 (A051) [EOD 07/20/04] [04-3319]

7/20/04 2 Summons issued on KIMBERLY E VANALSTINE. Answer due 8/19/04 for KIMBERLY E VANALSTINE Non-Service of Process Deadline 11/17/04 (A051) [EOD 07/20/04] [04-3319]

7/20/04 3 Trustee's statement of insufficient funds to pay filing fee filed by Plaintiff HABBO G FOKKENA, U S TRUSTEE re: [1-1] Complaint NOS 424 Objection To Discharge (727) . (A051) [EOD 07/20/04] [04-3319]

7/21/04 4 Affidavit Re: [1-1] Complaint NOS 424 Objection To Discharge (727). ..DOCUMENTS NOT SUBMITTED: , Proof of Service ..END DOCUMENTS NOT SUBMITTED. (A051) [EOD 07/21/04] [04-3319]

7/21/04 5 Certificate of Service by Plaintiff HABBO G FOKKENA, U S TRUSTEE of [2-1] Summons by KIMBERLY E VANALSTINE, [1-1] Complaint NOS 424 Objection To Discharge (727) . (A051) [EOD 07/21/04] [04-3319]

8/9/04 6 Pro Bono Notice to Defendants Re: [2-1] Summons by KIMBERLY E VANALSTINE . Court's Certificate of Mailing. (aml) [EOD 08/09/04] [04-3319]

9/15/04 7 Order for Scheduling Conference ;Sched/Pre-Trial Conf. set for 10:00 10/27/04 at Courtroom 228B (St. Paul) . Certificate of Mailing. (aml) [EOD 09/15/04] [04-3319]

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">Kimberly E. Vanalstine 46833 Goose Creek Road Harris, MN 55032</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) <u>91 7108 2133 3930 3661 2051</u></p>	

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-F-1838

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

KIMBERLY E. VANALSTINE

Chapter 7

Debtors

BK 02-32445

HABBO G. FOKKENA,
United States Trustee

Plaintiff,

vs.

Adv. No. 04-3319

KIMBERLY E. VANALSTINE

Defendants.

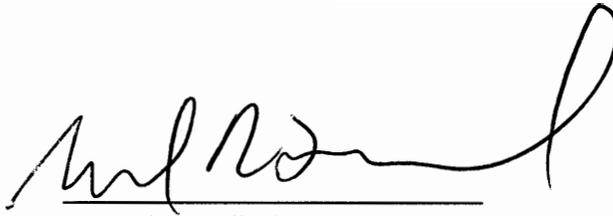
AFFIDAVIT OF DEFAULT

I, Michael R. Fadlovich, being duly sworn and under oath, state that:

1. I am employed as a Trial Attorney for the United States Trustee.
2. I am the attorney of record for the United States Trustee in the above entitled adversary proceeding.
3. I have not been served with an answer by the defendant.
4. A docket report generated on October 1, 2004, from the court's Electronic Records System shows that no answer was docketed in the Bankruptcy Court within the time prescribed by the Bankruptcy Rules. *See* Application for Default (Attached).

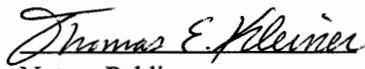
This concludes my Affidavit.

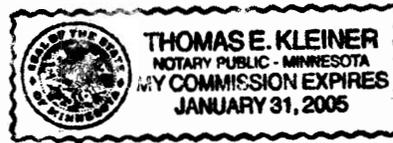
Dated: October 1, 2004



Michael R. Fadlovich
Trial Attorney

Subscribed and Sworn Before Me This 1st day of October, 2004.


Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

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Chapter 7

Debtors

BK 02-32445

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Plaintiff,

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KIMBERLY E. VANALSTINE

Defendants.

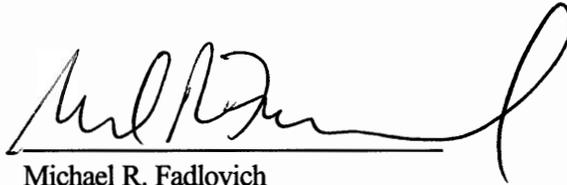
AFFIDAVIT OF IDENTIFICATION

I, Michael R. Fadlovich, being duly sworn and under oath, state that:

1. I am employed as a Trial Attorney for the United States Trustee.
2. I am the attorney of record in the above entitled adversary proceeding.
3. The name and address of the defendant in the above entitled matter is listed on the Voluntary Petition, dated July 1, 2002, (case number 02-32445), as the following: Kimberly E. Vanalstine, 46833 Goose Creek Road, Harris, MN 55032.
4. According to the bankruptcy Schedules, the defendant is not an infant and is not employed by a military organization. The schedules in case number 02-32445 were signed by the defendant under penalty of perjury.

5. Based on the foregoing, the United States Trustee is of the belief that the defendant is competent.

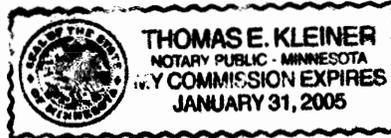
Dated: October 1, 2004.



Michael R. Fadlovich
Trial Attorney

Subscribed and Sworn Before Me This 1st day of October, 2004.


Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

KIMBERLY E. VANALSTINE

Chapter 7

Debtors

BK 02-32445

HABBO G. FOKKENA,
United States Trustee

Plaintiff,

vs.

Adv. No. 04-3319

KIMBERLY E. VANALSTINE

Defendants.

AFFIDAVIT ON MERITS AND AMOUNT DUE

I, Michael R. Fadlovich, being duly sworn and under oath, state that:

1. I am a Trial Attorney for the United States Trustee.
2. I am the attorney of record in the above entitled case.
3. A monetary judgment has not been requested in this adversary proceeding. The relief sought by the United States Trustee is a revocation of the defendant's Chapter 7 discharge in case number 02-32445.
4. The United States Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727(d)(2) & (d)(3).
5. Said relief is supported by the following facts:
 - A. The defendant/debtor, Kimberly E. Vanalstine commenced this bankruptcy case on

July 1, 2002, by the filing of a voluntary petition under chapter 7. Mary Jo A. Jensen-Carter was appointed chapter 7 trustee. On October 8, 2002, the debtor received a general discharge of her debts pursuant to §727(a).

B. The bankruptcy case had not been closed at the time this complaint was prepared and filed.

C. At the time the debtor's original chapter 7 filing, she may have been entitled to income tax refunds from calendar year 2002. The tax refund was property of the estate as provided for in 11 U.S.C. §541(a)(5).

D. The chapter 7 trustee, Mary Jo A. Jensen-Carter, moved the court for an order to require the defendant to turn over copies of her state and federal income tax returns and her tax refunds. On September 24, 2003, the court granted the turnover motion and ordered the defendant to turn over copies of her tax returns, as well as any tax refund, within five days. See Order dated September 24, 2004, Docket #10. See also, July 14, 2004, affidavit of Mary Jo A. Jensen-Carter, including copy of the order, attached to the U.S. Trustee's complaint. The court's order required the debtor (defendant) to turn over both the tax returns and the tax refund within five days. The order also required the Debtor to pay the trustee \$500.00 for attorney fees for bringing the turnover motion. The five day deadline for compliance by the debtor ended on September 29, 2003.

E. The defendant failed to turn over the tax returns and refunds and further failed to pay the trustee \$500.00 in attorney fees, all as required by the court's order.

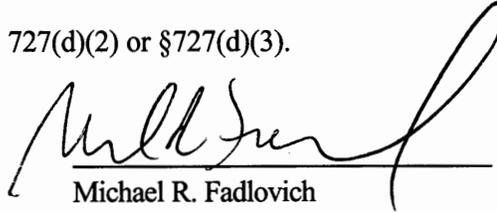
F. Pursuant to 11 U.S.C. § 541, the income tax refunds due to defendant from the taxing authorities were at all times property of the bankruptcy estate.

G. By refusing to turn over the tax returns and refund, the defendant acquired property of the estate, or acquired property that would have been property of the estate, and knowingly and fraudulently failed to report the acquisition of that property and further failed to turn the property over to the bankruptcy trustee. The Defendant further failed to obey an order of this court.

H. As a result, the chapter 7 trustee, Mary Jo A. Jensen-Carter, was unable to complete the administration of the estate.

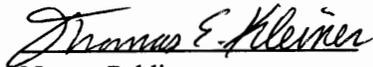
6. The defendant/debtor is subject to having the discharge of her debts in his bankruptcy case revoked pursuant to 11 U.S.C. § 727(d)(2) or §727(d)(3).

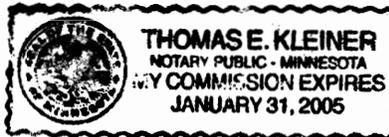
Dated: October 1, 2004.



Michael R. Fadlovich
Trial Attorney

Subscribed and Sworn Before Me This 1st day of October, 2004.


Notary Public



**UNITED STATES BANKRUPTCY COURT
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Debtors

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HABBO G. FOKKENA,
United States Trustee

Plaintiff,

vs.

Adv. No. 04-3319

KIMBERLY E. VANALSTINE

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT**

At Saint Paul, Minnesota on this _____ day of _____, 2004.

The United States Trustee's Motion for Default Judgment, which was supported by an Affidavit of Default, an Affidavit of Identification, and an Affidavit on the Merits as required by Local Bankruptcy Rule 7055-1 came before the undersigned.

Findings of Fact

1. The relief sought by the U.S. Trustee, as plaintiff, is supported by the following facts:
 - A. The defendant/debtor, Kimberly E. Vanalstine commenced this bankruptcy case on July 1, 2002, by the filing of a voluntary petition under chapter 7. Mary Jo A. Jensen-Carter was appointed chapter 7 trustee. On October 8, 2002, the debtor received a general

discharge of her debts pursuant to §727(a).

B. The bankruptcy case had not been closed at the time this complaint was prepared and filed.

C. At the time the debtor's original chapter 7 filing, the debtor may have been entitled to income tax refunds from calendar year 2002. The tax refund was property of the estate as provided for in 11 U.S.C. §541(a)(5).

D. The chapter 7 trustee, Mary Jo A. Jensen-Carter, moved the court for an order to require the defendant to turn over copies of her state and federal income tax returns and her tax refunds. On September 24, 2003, the court granted the turnover motion and ordered the defendant to turn over copies of her tax returns, as well as any tax refund, within five days. This court's order required the defendant to turn over both the tax returns and the tax refund within five days. The order also required the Debtor to pay the trustee \$500.00 for attorney fees for bringing the turnover motion. The five day deadline for compliance by the debtor ended on September 29, 2003.

E. The defendant failed to turn over the tax returns and refunds and further failed to pay the trustee \$500.00 in attorney fees, all as required by the order.

F. Pursuant to 11 U.S.C. § 541, the income tax refunds due to defendant from the taxing authorities were at all times property of the bankruptcy estate.

G. By refusing to turn over the tax returns and refund, the defendant acquired property of the estate, or acquired property that would have been property of the estate, and knowingly and fraudulently failed to report the acquisition of that property and further failed to turn the property over to the bankruptcy trustee. The Defendant further failed to obey an order of this

court.

H. As a result of the defendant's failure to comply with the court's turnover order and failure to cooperate with the chapter 7 trustee, the chapter 7 trustee was unable to collect property of the estate and was unable to complete administration of the estate.

Conclusions of Law

The defendant is not entitled to receive a discharge in this bankruptcy case after having been ordered to turn over tax returns and having failed to comply this court's order. Therefore, a revocation of the debtor's discharge under 11 U.S.C. § 727(d)(2) and (d)(3) is appropriate.

Order for Judgment

IT IS HEREBY ORDERED

That the debtor's discharge is hereby revoked in bankruptcy case number 02-32445.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Honorable Gregory F. Kishel
Chief United States Bankruptcy Judge

CERTIFICATE OF SERVICE

HABBO G. FOKKENA,
United States Trustee

Adv. No. 04-3319
BK 02-32445

Plaintiff,

vs.

KIMBERLY E. VANALSTINE

Defendants.

The undersigned hereby certifies under penalty of perjury that he is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers. That on October 1, 2004, he served a copy of the attached: United States Trustee's Motion for Default Judgment, Affidavit of Default, Affidavit of Identification, Affidavit on the Merits and Amount Due, and proposed Findings of Fact, Conclusion of Law and Order for Judgment, by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Mary Jo A. Jensen-Carter, Esq.
Buckely & Jensen-Carter Law Firm
1339 E County Road D
Vadnais Heights, MN 55109

David Kingsbury, Esq.
Kingsbury & Assoc.
14827 Energy Way
Apple Valley, MN 55124

Kimberly E. Vanalstine
46833 Goose Creek Road
Harris, MN 55032

By: e/Michael R. Fadlovich

Michael R. Fadlovich
Trial Attorney
MN Atty I.D. No. 158410
U.S. Trustee's Office
300 South Fourth St., #1015
Minneapolis, MN 55415
(612) 664-5500