

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 03-38036

Michael J. Miller,

Debtor(s).

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John A. Hedback, Trustee,

Plaintiff,

ADV 04-3343

vs.

Michael J. Miller,

**NOTICE OF HEARING AND  
MOTION FOR DEFAULT JUDGMENT**

Defendant(s).

\_\_\_\_\_

TO: MICHAEL J. MILLER, P.O. BOX 580408, MINNEAPOLIS, MN 55458; IAN TRAQUAIR BALL, 12 SOUTH 6<sup>TH</sup> ST., SUITE 326, MINNEAPOLIS, MN 55402; AND UNITED STATES TRUSTEE, 1015 US COURTHOUSE, 300 SOUTH 4<sup>TH</sup> STREET, MINNEAPOLIS, MN 55415.

1. John A. Hedback (Trustee), the duly appointed Trustee of the above-referenced bankruptcy case, by his attorney, moves the Court for the relief requested below and provides notice of hearing herewith.

**I. NOTICE OF HEARING**

2. The Court will hold a hearing on the following motion in Courtroom 228B, 228 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, on October 4, 2004, at 2:30 p.m., or as soon thereafter as counsel can be heard.

3. Any response to this motion shall be filed and delivered no later than September 29,

2004, by 2:30 p.m., which is three (3) days before the hearing date, or filed and mailed no later than September 23, 2004, which is seven (7) days before the hearing date. **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. Sections 1334 and 157 and Bankruptcy Rule 7055. This motion is filed under Bankruptcy Rule 7055 and 9013 and Local Rules 1202 through 1204 inclusive. This proceeding arises under 11 U.S.C. Section 727. This is a core proceeding. The petition for relief was filed thereby commencing the above-referenced bankruptcy case. The case is still pending.

5. John Hedback was appointed trustee.

6. On or about August 2, 2004, Plaintiff filed this adversary proceeding. This proceeding is still pending before this Court.

## II. MOTION

7. Plaintiff moves the Court for an order (1) determining that Defendant(s) were either served with the Summons and Complaint, or that service was attempted as required by Bankruptcy Rule 7004(b)(9); that Defendant(s) failed to interpose a defense; that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law; (2) determining that Defendant(s) have refused to comply with a lawful order of this Court; (3) revoking the discharge of the Defendant(s); (4) granting judgment in favor of the Plaintiff for his attorneys' fees and costs; and (5) granting any other relief the Court deems just and proper.

8. In support of this motion, Plaintiff relies on the filed pleadings and the memorandum of law and affidavits filed contemporaneously herewith.

WHEREFORE, the Plaintiff requests an order as follows:

(1) Determining that Defendant(s) were served with the Summons and Complaint or that service was attempted as required by Bankruptcy Rule 7004(b)(9); that Defendant(s) failed to interpose a defense; that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law;

(2) Determining that the Defendant(s) have refused to comply with a lawful order of this Court;

(3) Revoking the discharge of the Defendant(s); and

(4) Granting any other relief the Court deems just and proper.

Hedback, Arendt & Carlson, PLLC

Dated: September 7, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_\_

John A. Hedback #142438

2855 Anthony Lane South, Suite 201

St. Anthony, MN 55418

(612) 436-3280

Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 03-38036

Michael J. Miller,

Debtor(s).  
-----

John A. Hedback, Trustee,

Plaintiff,

ADV 04-3343

vs.

Michael J. Miller,

**AFFIDAVIT**

Defendant(s).  
\_\_\_\_\_

STATE OF MINNESOTA    )  
  )ss  
COUNTY OF HENNEPIN    )

I, John A. Hedback, being first duly sworn upon oath, depose and state as follows:

1. I am the duly appointed and acting trustee (Plaintiff or Trustee) and have knowledge of the facts set forth in this Affidavit.

2. On November 26, 2003, Michael J. Miller (Debtor) filed a voluntary Chapter 7 petition in bankruptcy, thereby commencing the above-reference case. The case is still pending.

3. On May 24, 2004, the Court entered an Order compelling Debtor to turn over property of the estate to the Trustee. Debtor again failed to comply with that order.

4. By order, dated March 3, 2004, the Defendant(s) received a discharge.

5. On or about August 2, 2004, I caused this adversary proceeding to be filed.

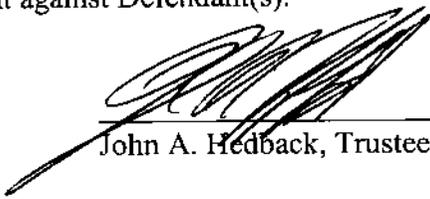
6. The Summons and Complaint were served upon Defendant and his counsel on August 2, 2004.

7. The time period for filing and serving an answer expired September 1, 2004.

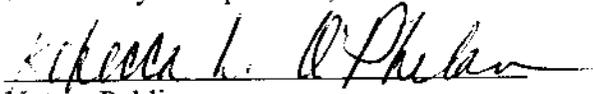
8. No answer has been filed in this proceeding.

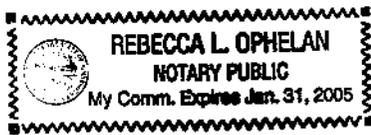
9. I have executed this Affidavit in accordance with Bankruptcy Rule 7055 for the purpose of enabling entry of default judgment against Defendant(s).

Dated: September 7, 2004

  
\_\_\_\_\_  
John A. Hedback, Trustee

Subscribed and sworn to before me  
this 7th day of September, 2004.

  
\_\_\_\_\_  
Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 03-38036

Michael J. Miller,

Debtor(s).

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John A. Hedback, Trustee,

Plaintiff,

ADV 04-3343

vs.

Michael J. Miller,

Defendant(s).

**AFFIDAVIT OF IDENTIFICATION,  
NON-MILITARY STATUS,  
NON-INFANCY AND COMPETENCY**

\_\_\_\_\_  
STATE OF MINNESOTA    )  
                                  )ss  
COUNTY OF HENNEPIN    )

I, John A. Hedback, being first duly sworn upon oath, depose and state as follows:

1. I am the duly appointed and acting trustee (Affiant, Plaintiff or Trustee) and have knowledge of the facts set forth in this Affidavit.

2. The Defendant's full name is as follows: Michael J. Miller. The address of record for the Defendant is 195 E 5<sup>th</sup> St. Apt. 905; St. Paul, MN. Defendant's counsel informed me that Defendant received mail at P.O. Box 580408, Minneapolis, Minnesota 55458.

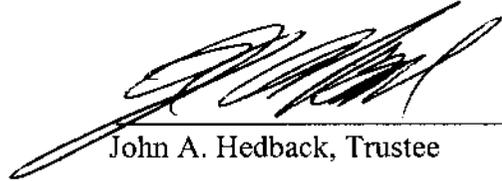
3. Defendants are not now, as Affiant verily believes, in the military service of the

United States of America.

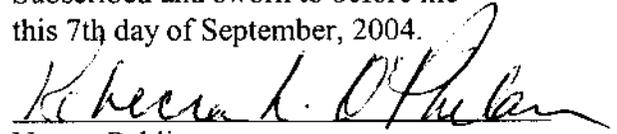
4. Defendants are not infants and are competent within the meaning of the Rules of Civil Procedure.

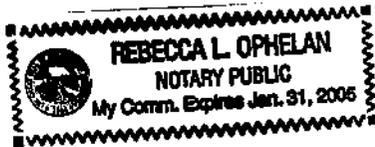
5. I make this Affidavit in accordance with Bankruptcy Rule 7055 and Local Rule 1105 for the purpose of obtaining entry of default judgment against Defendant for his failure to answer or otherwise defend this adversary proceeding.

Dated: September 7, 2004

  
\_\_\_\_\_  
John A. Hedback, Trustee

Subscribed and sworn to before me  
this 7th day of September, 2004.

  
\_\_\_\_\_  
Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 03-38036

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John A. Hedback, Trustee,

Plaintiff,

ADV 04-3343

vs.

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**MEMORANDUM OF LAW**

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Plaintiff submits this Memorandum of Law in support of his Motion for Default Judgment.

I. STATEMENT OF FACTS

Plaintiff relies on the statements of facts set forth in the Motion for Default Judgment, together with his Affidavit and the Affidavit of Identification, Non-Military Status, Non-infancy and Competency, and incorporates same herein.

II. STATEMENT OF LAW AND ARGUMENT

Bankruptcy Rule 7055, which incorporates Rule 55 of the Federal Rules of Civil Procedure, provides that default judgment may be entered when a party against whom a judgment for affirmative relief is sought, fails to plead or otherwise defend as provided by the rules.

Sections 727(e)(2), 727(d)(3) and 727(a)(6) of the Bankruptcy Code provides that failure to comply with a lawful Court order constitutes grounds for revocation of discharge.

The Defendant(s) were served with the Summons and Complaint. The Defendant(s) have failed to interpose a defense to the Complaint.

The Defendant(s) have refused to comply with a lawful Court order.

Plaintiff asks this Court to enter default judgment revoking the discharge of the Defendant(s).

Respectfully submitted,

Hedback, Arendt & Carlson, PLLC

Dated: September 7, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_\_

John A. Hedback, #142438  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 436-3280  
Attorneys for Plaintiff

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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Plaintiff,

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**UNSWORN DECLARATION FOR  
PROOF OF SERVICE**

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The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with offices located at Suite 201 Anthony Place, 2855 Anthony Lane South, St. Anthony, Minnesota, declares that on the date indicated below, I served the following:

1. Notice of Hearing and Motion for Default Judgment;
2. Affidavit;
3. Affidavit of Identification, Non-Military Status, Non-Infancy and Competency;
4. Memorandum of Law;
5. Findings of Fact, Conclusions of Law and Order for Default Judgment; and
6. Unsworn Declaration for 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 St. Anthony, Minnesota, addressed to each of them as follows:

Michael J. Miller

P.O. Box 580408  
Minneapolis, MN 55458

Ian Traquair Ball  
12 South 6<sup>th</sup> St., Ste 326  
Minneapolis, MN 55402

U.S. Trustee  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

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

Dated: September 7, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
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John A. Hedback, Trustee,

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Defendant(s).

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

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This proceeding came before the Court for hearing on motion by the Plaintiff for entry of default judgment. Appearances were noted on the record.

Upon review of the file and the pleadings before the Court, the Court hereby makes the following findings of fact and conclusions of law relative to this adversary proceeding.

1. Debtor filed a petition for relief on November 26, 2003, thereby commencing the above-referenced Chapter 7 bankruptcy case. The case is still pending.
2. John Hedback was appointed trustee.

3. On May 24, 2004, the Court entered an Order compelling Debtor to turn over property of the estate to the Trustee.

4. Defendant has filed an affidavit with this Court averring that Debtor has not complied with the Court's Order.

5. On or about August 2, 2004, Plaintiff filed this adversary proceeding. Plaintiff has filed an Unsworn Declaration for Proof of Service alleging that service was made upon Defendant by First Class Mail.

6. No Answer has been filed by Defendant in this adversary proceeding. The period of time to respond to Plaintiff's Complaint has expired.

7. Cause exists under Bankruptcy Rule 7055, which incorporates Rule 55 of the Federal Rules of Civil Procedure, why default judgment should be entered against Defendant.

8. Defendant has failed to comply with an Order of this Court and cause exists under 11 U.S.C. Section 727(d)(3) why Defendant's discharge should be revoked.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff's motion for default judgment is granted.
2. The discharge of the Debtor is hereby revoked.

BY THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge