

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Scott and Bonnie Hank

Chapter 7

Debtor(s).

BK 04-30934

**UNITED STATES TRUSTEE'S MOTION TO EXTEND TIME TO
BRING MOTION TO DISMISS UNDER 11 U.S.C. § 707(b)**

COMES NOW the United States Trustee, by and through his undersigned attorney, Michael R. Fadlovich, and moves the Bankruptcy Court for an Order to extend the time file a complaint objection to the discharge of the debtor pursuant to 11 U.S.C. § 727 or alternatively to extend the time for filing a motion for dismissal under § 707(b). In support of his motion, he states the following:

1. A hearing has been scheduled in this matter on August 4, 2004, at 10:30 a.m. in Courtroom No 228 A before the Honorable Dennis D. O'Brien, United States Bankruptcy Court for the District of Minnesota, U.S. Courthouse, 316 North Robert Street, Minneapolis, Minnesota.
2. Any response to this motion must be filed and delivered not later than July 30, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than July 26, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1.
3. This motion is filed pursuant to FED. R. BANKR. P. 1017(e) and 9006 and Local Bankruptcy Rules 9013-2 and 9006-1(d). The United States Trustee is moving to extend the period of time to file a complaint pursuant to 11 U.S.C. §727 or a motion to dismiss under §707(b). *See* Fed. R.

Bank. P. 4004(b). The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a). The petition commencing this Chapter 7 case was filed on February 19, 2004.

4. FED.R.Bankr .P. 4004(b) provides that a motion to extend the period of time to file a complaint objecting to the Chapter 7 debtor's discharge must be filed prior to the expiration date. The last date to file a complaint objection to the discharge of this debtor under Section 727 is June 14, 2004. Likewise, FED.R.Bankr. P. 1017(e)(1) provides that a motion to extend the time to file a motion to dismiss under 11 U.S.C. § 707(b) must be filed before the discharge date.

5. On April 21, 2004, as part of his §707(b) investigation into the debtors, the United States Trustee wrote to the debtors for additional financial information (*See* Att. Ex. 1). The U.S. Trustee requested in his letter that a response be provided no later than May 14, 2004. The debtors responded on May 10, 2004, but the documents provided failed to include copies of bank statements and check registers for the last six months for all accounts owned by the debtors.

6. The U.S. Trustee then sent a second request on May 27, 2004 for the bank statements and check registers for the past six months for all accounts owned by the debtors and additional information on Ms. Hank's daycare business with a response due by June 7, 2004 (*See* Att. Ex. 2). The debtors responded on June 3, 2004, but the bank statements raised additional questions regarding a deposit made on January 5, 2004 of \$22,685.00, and two checks written for \$12,484.27 on January 5, 2004 and for \$1,000.00 on January 8, 2004. The debtors also made a withdrawal on January 8, 2004 in the amount of \$7,500.00.

7. The Debtors' December bank statement also showed that the debtors had two open loans, one with a balance of \$12,609.54 and the other with a balance of \$15,142.27, however, on their

January 6, 2004 bank statement it showed that each of these loans had been paid in full. The U.S. Trustee then sent a 3rd letter dated June 8, 2004 requesting that the debtors please explain the above transactions. The U.S. Trustee has not received a response to his latest information request as of the date of filing of this motion. The foregoing transactions are also not consistent with the information contained in the debtors' sworn bankruptcy schedules filed with the court.

8. The debtors, via counsel, provided some information requested by the U.S. Trustee. The information provided failed to resolve the U.S. Trustee's questions. As a result, the U.S. Trustee does not know whether either a motion under §707(b) or a motion under §727 would be appropriate.

9. The U.S. Trustee needs until August 5, 2004, to determine whether to bring a motion under either §727 or §707(b) and hereby requests an extension to that date. The United States Trustee would then have approximately an additional fifty seven days to complete his investigation.

WHEREFORE, the United States Trustee requests that the Bankruptcy Court extend the period of time to file a motion to dismiss pursuant to either 11 U.S.C. § 707(b) or 11 U.S.C. §727 to August 5, 2004.

Dated: June 9, 2004

HABBO G. FOKKENA
United States Trustee
Region 12

/s/ Michael R. Fadlovich
Michael R. Fadlovich
Trial Attorney
Office of U.S. Trustee
MN Atty. No. 158410

U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415
TELE: (612) 664-5500
FAX: (612) 664-5516



U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

April 21, 2004

Stephen Behm
P.O. Box 1056
Mankato, MN 56002

Re: Scott & Bonnie Hank
Bky 04-30934

*U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415*

*612 / 664-5500
FAX 612 / 664-5516*

Dear Mr. Behm,

As you are aware, the Office of the United States Trustee must investigate every debtor pursuant to 11 U.S.C. §707(b). Please provide the following information on or before May 14, 2004;

1. Copies of the last three pay stubs for Mr. Hank, and a year-to-date listing of receipts and disbursements for Ms. Hank's daycare business. If the pay stubs show a deduction for 401(k) or similar retirement plan, please advise if the deduction is voluntary or mandatory. If the pay stubs show a deduction for 401(k) loan repayment, please advise as to the balance of the loan and the estimated payoff date.
2. Copies of 2001, 2002, and 2003 state and federal tax returns, including W-2s, 1099s, and all other attachments and schedules.
3. Copies of bank statements and check registers for the last six months for all accounts owned by the debtors.

Please call if you have a question or concern about this letter. Thank you for your assistance in this matter.

Sincerely,

HABBO G. FOKKENA
United States Trustee

By *Tom Kleiner*
Tom Kleiner



U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

*U.S. Courthouse, Suite 1015
300 South Fourth Street*

*612 / 664-5500
FAX 612 / 664-5516*



U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

May 27, 2004

Stephen Behm
P.O. Box 1056
Mankato, MN 56002

Re: Scott & Bonnie Hank
Bky 04-30934

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

612 / 664-5500
FAX 612 / 664-5516

Dear Mr. Behm,

I have reviewed your letter dated May 10, 2004 and the documentation you sent in response to my letter dated April 21, 2004. Please address the following:

1. Please provide the copies of bank statements and check registers that I requested in my April 21, 2004 letter.
2. In your May 10, 2004 letter, you state that receipts and disbursements information for Ms. Hank's daycare business is not available because she lost her daycare license in October 2003. Please advise if, as indicated on Schedule I, Ms. Hanks is still self employed as a daycare provider. If so, please have her provide the requested information on year-to-date receipts and disbursements. If not, please have her provide a written statement that she has no current monthly income from daycare or any other source.

Please provide the requested information/documents by June 7, 2004. Thank you for your assistance in this matter.

Sincerely,

HABBO G. FOKKENA
United States Trustee

By Tom Kleiner
Tom Kleiner
Bankruptcy Analyst

cc: Scott & Bonnie Hank
212 Second Street North
Le Sueur, MN 56058

Paul Bucher, Chapter 7 Trustee



U. S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

June 8, 2004

U.S. Courthouse, Suite 1015

612 / 664-5500

300 South Fourth Street

FAX 612 / 664-5516

Minneapolis, MN 55415

Stephen J. Behm
P.O. Box 1056
Mankato, MN 56002-1056

Re: Scott & Bonnie Hank
Bky 04-30934

Dear Mr. Behm,

I have reviewed the bank statements that you sent with your letter dated June 3, 2004. Please address the following:

1. Please have the debtors identify the source of the \$22,685.18 deposit on 1/5/04, and the \$5,300 deposit on 1/23/04.
2. Please have the debtors identify the recipient of check 1761, paid on 1/5/04 for \$12,484.27, check 1763, paid on 1/8/04 for \$1,000, and the check/withdrawal of \$7,500 on 1/8/04.
3. The 12/5/03 bank statement shows two open loans, number 40800 with a balance of \$12,609.54, and number 70167, with a balance of \$15,142.27. The 1/6/04 bank statement shows both loans as paid in full. Please advise as to the nature of the loans (secured/unsecured, etc.), as well as the source of the funds required to pay off the loans.

Please let me know if you have any questions. Thank you for your assistance in this matter.

Sincerely,

HABBO G. FOKKENA
United States Trustee

By *Tom Kleiner*
Tom Kleiner
Bankruptcy Analyst

cc: Scott & Bonnie Hank
212 Second Street North
Le Sueur, MN 56058

Paul Bucher, Chapter 7 Trustee

VERIFICATION

I, Michael R. Fadlovich, attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: June 9, 2004

Signed: /s/ Michael R. Fadlovich
Michael R. Fadlovich
Trial Attorney

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Scott and Bonnie Hank

Chapter 7

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BK 04-30934

MEMORANDUM OF LAW

The United States Trustee through his undersigned attorney, Michael R. Fadlovich, files this Memorandum of Law in support of his motion to extend the time to file a complaint objection to discharge pursuant to 11 U.S.C. § 727 and extending the time to file a motion to dismiss as a substantial abuse under 11 U.S.C. § 707(b).

The United States Trustee requests that the Bankruptcy Court extend the period of time to file an objection to discharge pursuant to Federal Bankruptcy Rule 4004, which provides: “On motion of any party in interest, after hearing on notice the court may extend for cause the time for filing a complaint objection to discharge. The motion shall be made before such time has expired.” FED.R.Bankr.P. 4004(b). The motion to extend the period of time to file a complaint to object to the discharge of the debtors must only be pending by the present expiration date of June 14, 2004.

Extending the period of time to file an objection to debtor’s discharge will not harm the debtors. The debtors may be able to explain the questions that have arisen in their bankruptcy case. The delay will provide the debtors with that opportunity, without having to respond formally to a Section 727 complaint or to a §707(b) motion.

Likewise an extension of time to file a motion to dismiss under 11 U.S.C. § 707(b) is appropriate and allowed under by Fed. R. Bankr. P. 1017(e)(1), which provides in part:

A motion to dismiss a case for substantial abuse may be filed by the

United States trustee only within 60 days after the first date set for the meeting of creditors under § 341 (a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss. The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

FED. R. BANKR. P. 1017(e)(1).

Cause exists to extend the period of time to file a Section 707(b) in this case. The U.S. Trustee made an inquiry into the facts and circumstances surrounding the debtor's case on April 21, 2004, and a response to that inquiry was requested to be made by May 14, 2004. On May 10, 2004 the U.S. Trustee received some of the information, however the information provided failed to resolve the U.S. Trustee's questions and issues so an additional letter was sent on May 27, 2004 with a response date of June 7, 2004. The U.S. Trustee received that information on June 3, 2004, however in review of this information a third letter dated June 8, 2004 was sent asking the debtors to explain several transactions that were questionable on their bank statements. The U.S. Trustee, as of the date of this filing, has not received a response from the debtors.

The debtors are not prejudiced by the United States Trustee's request. The United States Trustee regularly files a motion to dismiss under Section 707(a) and (b) for bad faith and failure to cooperate when debtors fail to respond to Section 707(b) investigation letters. Since the communication from Counsel for the debtors indicates their willingness to cooperate, the U.S. Trustee believes that extending the deadline is necessary so that the debtors have an opportunity to provide the information needed by the U.S. Trustee for his analysis and so that the debtors can, if possible, avoid facing a motion to dismiss.

The U.S. Trustee requests that the Bankruptcy Court extend the time period to file a motion to

dismiss pursuant to 11 U.S.C. § 707(b) based on the factors set out in the motion. During the extended time period, the United States Trustee can review the documents and request any other additional and necessary financial information to determine whether this Chapter 7 case is a substantial abuse under Section 707(b).

The United States Trustee respectfully requests that the Bankruptcy Court extend the period of time to file a motion to dismiss pursuant to 11 U.S.C. § 707(b) to .

Dated: June 9, 2004

HABBO G. FOKKENA
United States Trustee
Region 12

/s/ Michael R. Fadlovich
Michael R. Fadlovich
Trial Attorney
Office of U.S. Trustee
MN Atty. No. 158410
U.S. Courthouse, Suite 1015
300 South Fourth Street
Minneapolis, MN 55415
TELE: (612) 664-5500
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**UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

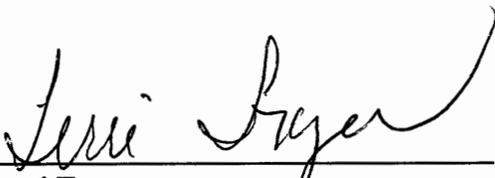
I, Terri Frazer, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers and that on June 9, 2004, I caused to be served the following: United States Trustee's Motion to Extend Time to File Motion to Dismiss pursuant to 11 U.S.C. § 707(b), Verification, Memorandum of Law and proposed Order, on the entities listed below 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):

Scott and Bonnie Hank
212 Second Street North
Le Sueur, MN 56058

Stephen J. Behm
Eskens, Gibson, & Behm Law Firm
PO Box 1056
Mankato, MN 56002

Paul Bucher
P.O. Box 549
Rochester, MN 55903-0549



Terri Frazer
Office of the United States Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Scott and Bonnie Hank

Chapter 7

Debtor(s).

BK 04-30934

ORDER

At S.t Paul, Minnesota, this _____ day of _____, 2004.

The United States Trustee's Motion to extend the deadline by which he can file complaint in objection to the debtors discharge pursuant to 11 U.S.C. § 727 and to also extend time the time by which the U.S. Trustee can file a motion to dismiss under 11 U.S.C. § 707(b) came before the undersigned. Appearances are noted in the record.

Based on the pleadings, files, the arguments of parties, the findings of fact and conclusions of law made on the record, the Court being fully advised of the premises -

HEREBY ORDERS:

That the deadline for the U.S. Trustee or chapter 7 trustee to file a complaint in objection to the discharge of the debtor pursuant to 11 U.S.C. § 727 is extended through August 5, 2004.

Further, the deadline for the U.S. Trustee to file a motion to dismiss the case as a substantial abuse under 11 U.S.C. §707(b) is likewise extended through August 5, 2004.

The Honorable Dennis D. O'Brien
United States Bankruptcy Judge

