

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Kristin A. Lowry,

Case No: 04-31455

Debtor(s).

NOTICE OF HEARING AND MOTION FOR TURNOVER

TO: THE ABOVE NAMED DEBTOR(S), HER ATTORNEY STEPHEN J BEHM, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 15, 2004 at 1:30 p.m. or as soon thereafter as counsel can be heard, before Honorable Gregory F Kishel, in Court Room No: 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 1:30 p.m., on November 10, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than November 4, 2004, which is seven before the time set for the hearing (excluding Saturdays, Sundays and holidays). **IF NO RESPONSE IS TIMELY FILED, THE COURT MAY IN ITS DISCRETION ENTER AN ORDER GRANTING TURNOVER WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy procedure 4002, and Local Rule 1070-1. The petition commencing the debtor(s)' Chapter 7 case was filed on March 11, 2004. Charles W. Ries was appointed as Chapter 7 trustee on March 12, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate, and certain documents and information in order to properly administer the bankruptcy case. The trustee has attempted to investigate a potential preferential payment to "Joey Larson" and has requested documentation.

6. By correspondence dated July 22, 2004; August 18, 2004; and October 8, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required information necessary to complete case administration.

7. The debtor(s) have failed to turn over:

a. Documentation relative to the \$1,600 paid to Joey Larson, and the complete name and address of Joey Larson.

8. Because the debtor(s) failed to provide the requested information and assets, the trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704.

9. The trustee has incurred costs and expenses, including attorney fees in bringing this motion.

10. In order to ensure that the debtor(s) comply with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. § 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtor(s) not promptly comply with its provisions.

11. This verified motion is based upon all of the files and records herein.

12. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor(s) to turn over to the trustee the following:
 - a. Documentation relative to the \$1,600 paid to Joey Larson, and the complete name and address of Joey Larson.
2. Directing the debtor(s) to complete the turnover of information and assets within 30 days of the entry of an order granting the trustee's motion.
3. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
4. For costs and attorney fees of \$250.00 in connection with bringing this motion.
5. For such other relief as the Court deems just and equitable.

Dated this 20th day of October, 2004

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street - P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion for Turnover and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING*
TANYA M. JOHNSON*

PHONE: 507.625.6600

July 22, 2004

Stephen J Behm
Eskens Gibson & Behm, Chtd.
115 E Hickory #200
PO Box 1056
Mankato MN 56002-1056

RE: Kristin A. Lowry
Bankruptcy No: 04-31455

Dear Mr. Behm:

Please provide me with documentation relative to the \$1,600 paid to Joey Larson or an affidavit with an explanation what the payment was for; and the complete name and address of Joey Larson.

Also, if the debtor wants to initiate the contact, bearing in mind that I am going to be requesting the information back, or if the debtor wants to make a settlement offer, I would certainly consider that; otherwise I would intend to proceed with the recovery.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jmm



UNION SQUARE BUSINESS CENTER • SUITE 200
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007
PHONE: 507.625.6600 • FAX: 507.625.4002 • E MAIL: mrr-law@mrr-law.com

*BOARD CERTIFIED AS CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY AND/OR THE MINNESOTA STATE BAR ASSOCIATION
*ALSO ADMITTED IN SOUTH DAKOTA *ALSO ADMITTED IN IOWA *ALSO ADMITTED IN NORTH DAKOTA



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEJERDING•
TANYA M. JOHNSON•

PHONE: 507.625.6600

August 18, 2004

Stephen J Behm
Eskens Gibson & Behm, Chtd.
115 E Hickory #200
PO Box 1056
Mankato MN 56002-1056

RE: Kristin A. Lowry
Bankruptcy No: 04-31455

Dear Mr. Behm:

Enclosed please find my letter to you dated July 22, 2004.

Please provide a response within the next 10 days.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

UNION SQUARE BUSINESS CENTER • SUITE 200
201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007
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MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING*
TANYA M. JOHNSON*

PHONE: 507.625.6600

October 08, 2004

Stephen J Behm
Eskens Gibson & Behm, Chtd.
115 E Hickory #200
PO Box 1056
Mankato MN 56002-1056

RE: Kristin A. Lowry
Bankruptcy No: 04-31455

Dear Mr. Behm:

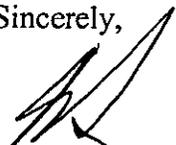
This is my third request for the following:

Please provide me with documentation relative to the \$1,600 paid to Joey Larson or an affidavit with an explanation what the payment was for; and the complete name and address of Joey Larson.

Also, if the debtor wants to initiate the contact, bearing in mind that I am going to be requesting the information back, or if the debtor wants to make a settlement offer, I would certainly consider that; otherwise I would intend to proceed with the recovery.

I would appreciate the debtor's cooperation in administering her bankruptcy estate. It would be my intention to file a turnover motion for the documentation; ultimately the matter could come to revocation of her discharge

Sincerely,



Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

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201 NORTH BROAD STREET • P.O. BOX 7 • MANKATO, MINNESOTA 56002-0007
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-31455

Kristin A. Lowry,

Debtor(s).

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Charles W. Ries, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on March 11, 2004, and is pending before this Court.
2. Charles W. Ries was appointed as Chapter 7 trustee on March 12, 2004.
3. The trustee made demand upon the debtor(s) for turnover of information needed to administer the bankruptcy case on July 22, 2004; August 18, 2004; and October 8, 2004, as shown in Exhibit A to the instant motion, and incorporated therein.
4. The debtor(s) failed to supply necessary information to the trustee in response to the turnover demand.
5. The debtor(s) continue to withhold information necessary to conclude administration of the bankruptcy case.

DISCUSSION

1. Turnover of Information.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to a complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; . . .

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtor(s)' failure to supply necessary information, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor(s) provide information regarding Documentation relative to the \$1,600 paid to Joey Larson, and the complete name and address of Joey Larson.

2. Forfeiture of Discharge.

Under 11 U.S.C. 727(a)(6)(A), the Code provides that if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 727(a)(6)(A) so that the debtor(s) will have an additional incentive to perform in a timely manner.

Based upon the foregoing the Chapter 7 trustee is entitled to an Order requiring that the debtor(s) turn over non-exempt funds, if any, and information requested in Exhibit A to the Motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the Order be designated a lawful Order pursuant to 11 U.S.C. 727(a)(6)(A).

Dated this 20th day of October, 2004.

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Trustee's Memorandum of Facts and Law in Support of Motion for Turnover with Exhibit A and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-31455

Kristin A. Lowry,

Debtor(s).

DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 20th day of October, 2004, she served the Notice of Hearing and Motion for Turnover and Trustee's Memorandum of Facts and Law in Support of Motion for Turnover by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Kristin A. Lowry
844 ½ South Avenue
N. Mankato, MN 56003

Stephen J Behm
Eskens Gibson & Behm, Chtd.
115 E Hickory #200
PO Box 1056
Mankato, MN 56002-1056

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janine Miller

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-31455

Kristin A. Lowry,

Debtor(s).

ORDER

The above captioned matter came before the Court on the _____ day of _____, 2004 on motion by the Chapter 7 trustee Charles W. Ries seeking an order requiring the debtor(s) to turn over information and certain assets.

Charles W. Ries appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtor(s) shall turn over to the trustee within thirty (30) days of the entry of this Order:
 - a. Documentation relative to the \$1,600 paid to Joey Larson, and the complete name and address of Joey Larson.
2. That this Order shall constitute a lawful Order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtor(s) fail to comply with its terms in a timely manner.
3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Charles W. Ries as Trustee for the estate within 10 days of entry of this Order.

Dated this _____ day of _____, 2004.

United States Bankruptcy Judge