

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Van Fleet, Kim Marie,

Chapter 7
Bky Case No. 04-31964

Debtor.

**NOTICE OF HEARING AND MOTION FOR
TURNOVER OF INFORMATION**

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR AND HER ATTORNEY
AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3:

1. Patti J. Sullivan, Trustee of the bankruptcy estate of the above-named Debtor moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 11:30 A.M. on September 7, 2004 in Courtroom No. 228B, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and delivered not later than 11:30 A.M. on September 1, 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 August 26, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). **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. §§157 and 1334, Bankruptcy Rules 4002 and 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on March 31, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §§ 521, 541, 542(a) and 704 and Bankruptcy Rule 9013 and Local Rule 6072-1. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. The Chapter 7 Trustee requests turnover of certain documents and information in order to properly administer the bankruptcy estate.

6. By correspondence dated April 23, 2004, June 2, 2004, July 8, 2004, and July 14, 2004, attached hereto and incorporated herewith as Exhibits "A1", "A2", "A3", and "A4" the Trustee required turnover of information necessary to complete case administration. Despite written requests to the debtor's attorney to surrender information, the debtor has failed to surrender and continues to withhold the debtor's TCF Bank Statement showing the amount of funds in the debtor's checking account on March 31, 2004.

7. Because the debtor failed to provide the requested information the Trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. §704.

8. In order to ensure that the debtor complies 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 not promptly comply with its provisions.

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

10. 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 to turnover to the Trustee the debtor's TCF Bank Statement showing the amount of funds in the debtor's checking account on March 31, 2004 within ten (10) days of the entry of an Order granting the Trustee's motion.
2. 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).
3. For such other relief as the Court deems just and equitable.

Dated this 12th day of August 2004.

/e/ Patti J. Sullivan
Patti J. Sullivan
Trustee in Bankruptcy
Attorney ID No. 170124
P.O. Box 16406
St. Paul, MN 55116
(651) 699-4825

VERIFICATION

I, Patti J. Sullivan, Chapter 7 Trustee, the moving party, named in the foregoing notice of hearing and 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 August 12, 2004.

Signed: /e/ Patti J. Sullivan
Patti J. Sullivan, Trustee

PATTI J. SULLIVAN
UNITED STATES CHAPTER 7 PANEL TRUSTEE

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

April 23, 2004

Joseph L. Kelly, Esq.
Kelly Law Office
12400 Portland Avenue S.
Suite 120
Burnsville, MN 55337

Re: VAN FLEET, KIM MARIE
Bankruptcy No. 04-31964

Dear Mr. Kelly:

My review of this file indicates that I will need the following information prior to or at the meeting of creditors to be held on 05/07/04:

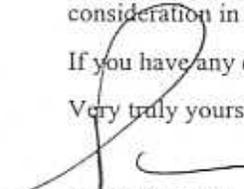
1. Bank statements for time period covering 03/31/04;
2. Pay stubs for time period covering 03/31/04; and
3. 2003 Federal and State Income Tax Returns.

I enclose three copies of the tax stipulation. Please have the debtor sign all three copies and return them to me as soon as possible.

All of the documents the debtor turns over are property of the bankruptcy trustee. They will not be returned to the debtor. They will be destroyed two years after the debtor's bankruptcy case is closed unless the debtor makes prior arrangements to pick them up from the trustee's office. Be sure to make copies of any documents the debtor requires before the debtor turns them over to me. Thank you for your consideration in this matter.

If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,


Patti J. Sullivan
Trustee in Bankruptcy

Encl.

PJS:lde

cc: Kim Marie Van Fleet (without enclosure)
5365 180th Street West
Farmington, MN 55024-9279

EXHIBIT

"A1"

PATTI J. SULLIVAN
UNITED STATES CHAPTER 7 PANEL TRUSTEE

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

June 2, 2004

Joseph L. Kelly, Esq.
Kelly Law Office
12400 Portland Avenue S.
Suite 120
Burnsville, MN 55337

Re: Van Fleet, Kim Marie
Bankruptcy No. 04-31964

Dear Mr. Kelly:

My review of this file following the meeting of creditors held on 05/07/04 indicates the debtor has the following non-exempt property:

1. TCF Bank checking account #6851495822	unknown
2. Jewelry	\$250.00
3. Lawnmower	\$20.00
4. Computer	\$50.00
5. Non-exempt wages	unknown

Please provide to me the following information so that I can calculate the total balance due for these non-exempt items:

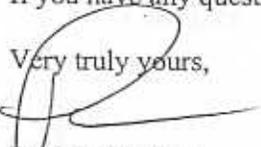
1. TCF Bank statement showing the amount of funds in the debtor's checking account on March 31, 2004;
2. Paycheck stub for the period beginning March 21, 2004 and ending April 3, 2004.

Please provide the requested information within ten (10) days from the date of this letter.

I am enclosing Stipulations relating to the 2004 income tax refunds. Please have the debtor execute all copies and return them to me as soon as possible. The debtor should note that the State of Minnesota will send the refunds directly to me; however, the Internal Revenue Service may send the federal refunds to the debtor. Please remind the debtor that as soon as she receives the 2004 income tax refunds, she must forward them to me, as Trustee. In addition, I hereby request that the debtor provide to me copies of her state and federal income tax returns, as soon as they are filed.

If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,


Patti J. Sullivan
Trustee in Bankruptcy

PJS:jk

cc: Kim Van Fleet

EXHIBIT

"A2"

PATTI J. SULLIVAN
UNITED STATES CHAPTER 7 PANEL TRUSTEE

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

July 8, 2004

Joseph L. Kelly, Esq.
12400 Portland Ave S #120
Burnsville, MN 55337

Re: Van Fleet, Kim Marie
Bankruptcy No. 04-31964
Date of Filing: 03/31/04

Dear Mr. Kelly:

This is in response to your letter dated June 25, 2004. At the meeting of creditors, your client provided me with a TCF Bank statement dated 3-17-04 along with paycheck stubs dated 3-26-04, 4-23-04 and 5-7-04. Please provide me with the TCF Bank statement covering the date of filing and the paycheck stub dated 4-9-04.

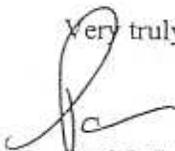
I am enclosing Stipulations relating to the 2003 Minnesota property tax refund. Please have the debtor execute all copies and return them to me as soon as possible. Please remind the debtor that as soon as she receives the 2003 property tax refund, she must forward them to me, as trustee. In addition, I hereby request that the debtor provide to me copies of her 2003 property tax return as soon as it is filed. If the debtor will not qualify for a property tax refund, please have her execute a statement indicating she will not qualify for a property tax refund.

Please ask the debtor to call me and make arrangements to surrender the jewelry and computer.

I would appreciate a response to this letter within ten (10) days from the date of this letter. If you have any questions regarding this matter, please feel free to contact me.

Thank you for your cooperation.

Very truly yours,



Patti J. Sullivan
Trustee in Bankruptcy

PJS:jk

Encl.

cc: Van Fleet, Kim Marie

EXHIBIT

"A3"

PATTI J. SULLIVAN
UNITED STATES CHAPTER 7 PANEL TRUSTEE

P.O. Box 16406, St. Paul, MN 55116

Telephone: (651) 699-4825

Facsimile: (651) 699-4831

July 14, 2004

Joseph L. Kelly, Esq.
Kelly Law Office
12400 Portland Avenue S.
Suite 120
Burnsville, MN 55337

Re: Van Fleet, Kim Marie
Bankruptcy No. 04-31964

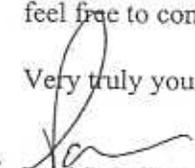
Dear Mr. Kelly:

I received the paycheck stub dated April 9, 2004. Thank you. The TCF Bank statement I received was for the period ending March 21, 2003. Please send me a copy of the TCF Bank statement showing the amount of funds in the debtor's checking account on March 31, 2004.

Please provide the requested information within ten (10) days from the date of this letter.

Thank you for your cooperation and assistance. If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,


Patti J. Sullivan
Trustee in Bankruptcy

PJS:jk

cc: Kim Van Fleet

EXHIBIT

"A4"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Van Fleet, Kim Marie,

Chapter 7
Bky Case No. 04-31964

Debtor.

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

Patti J. Sullivan, Chapter 7 Trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on March 31, 2004, and is pending before this Court.
2. Patti J. Sullivan, was appointed as Chapter 7 Trustee on April 1, 2004.
3. The Trustee made demand upon the debtor for turnover of information needed to administer the bankruptcy case on April 23, 2004, June 2, 2004, July 8, 2004, and July 14, 2004, as shown in Exhibits "A1", "A2", "A3", and "A4" (attached) to the instant motion, and incorporated therein.
4. The debtor failed to supply necessary information to the Trustee in response to the turnover demand.
5. The debtor continued 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: Bently, 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 provide her TCF Bank Statement showing the amount of funds in the debtor's checking account on March 31, 2004.

Forfeiture of Discharge.

Under 11 U.S.C. §727 (a)(6)(A), the Code provides that if debtor refuses 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 11 U.S.C. §727 (a)(6)(A) so that the debtor 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 turnover information requested in Exhibits "A1," "A2", "A3", and "A4" attached to the Motion so that she 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 12th day of August, 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan
Trustee in Bankruptcy
Attorney ID No. 170124
P.O. Box 16406
St. Paul, MN 55116
(651) 699-4825

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In the Matter of:

Van Fleet, Kim Marie,

Bky No. 04-31964

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Joeline Kissinger, declare under penalty of perjury that on the 12th day of August, 2004, I mailed a copy of the attached **Notice of Hearing and Motion for Turnover of Information, Trustee's Memorandum of Facts and Law in Support of Motion for Turnover of Information, and Proposed Order** by first class mail postage prepaid to each entity named below or on the statement attached at the address stated below or in said attachment for each entity:

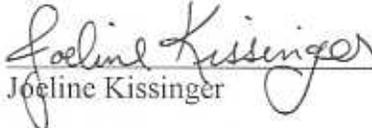
Joseph L. Kelly, Esq.
Kelly Law Office
12400 Portland Ave S #120
Burnsville, MN 55337

United States Trustee
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Kim Marie Van Fleet
5365 180th Street W
Farmington, MN 55024-9279

Ford Motor Credit Company
c/o Stewart, Zlimen & Jungers, Ltd.
430 Oak Grove Street, #200
Minneapolis, MN 55403

Executed on this 12th day of August, 2004.


Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Van Fleet, Kim Marie,

Chapter 7
Bky Case No. 04-31964

Debtor.

ORDER

The above captioned matter came before the Court on September 7, 2004, on motion by the Chapter 7 Trustee Patti J. Sullivan in this case, seeking an order requiring the debtor to turnover information.

Patti J. Sullivan 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 shall turn over to the Trustee her TCF Bank Statement showing the amount of funds in the debtor's checking account on March 31, 2004 within ten (10) days of the entry of this Order.
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 fail to comply with its terms in a timely manner.

Dated this ____ day of _____, 2004.

Gregory F. Kishel
Chief Judge Of U.S. Bankruptcy Court