

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

BEVERLY J. NIKOLAS,
Debtor

Bankruptcy No. 04-32756
Chapter 7

**NOTICE OF HEARING
AND MOTION TO DISMISS**

1. Michael S. Dietz moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 2:30 p.m. on October 27, 2004 in Courtroom No.228B, United States Courthouse, at 316 North Robert Street in St Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 2:30 p.m. on October 20, 2004, which is seven days before the time set for the hearing, or filed and served by mail not later than October 17, 2004, which is ten days before the time set for the hearing.

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

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. " 157 and 1334 and Local Rule 1070-1. This proceeding is a core proceeding. The petition filing this case as a chapter 7 case was entered on May 6, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. ' 707(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-5. Movant requests relief with respect to dismissal of the above chapter 7 bankruptcy case for the debtor's unreasonable delay of the case by failing to appear at his Section 341 Meeting of Creditors and failing to appear at the rescheduled meeting.

6. The Section 341 Meeting of Creditors in the above case was initially set for June 11, 2004. The debtor did not appear at the scheduled time. The meeting was then rescheduled to August 6, 2004. Debtor's attorney sent notice to all parties. The debtor did not appear at the rescheduled meeting.

7. The undersigned believes this motion contains an adequate statement of facts and law upon which the moving party will rely and a separate memorandum of law and affidavit of fact is unnecessary.

WHEREFORE, the trustee moves the court for an order that this case be dismissed and such other relief as may be just and equitable.

Dated: October 4, 2004

DUNLAP & SEEGER, P.A.

By: /e/ Mike Dietz

Michael S. Dietz
Registration No. 188517
Trustee
Post Office Box 549
Rochester, Minnesota 55903-0549
Telephone: (507) 288-9111

Dated: October 4, 2004

VERIFICATION

I, Michael S. Dietz, 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: October 4, 2004

/e/ Mike Dietz

Michael S. Dietz, Trustee
Post Office Box 549
Rochester, Minnesota 55903

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

BEVERLY J. NIKOLAS,
Debtor

Bankruptcy No. 04-32756
Chapter 7

ORDER OF DISMISSAL

AT ST. PAUL, MINNESOTA.

This matter came before the Court upon the motion of the trustee to dismiss the above-captioned Chapter 7 bankruptcy case. Appearances, if any, were noted upon the record.

NOW THEREFORE, IT IS ORDERED:

The above captioned bankruptcy case is hereby dismissed.

Dated: _____

BY THE COURT:

Gregory F. Kishel
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

BEVERLY J. NIKOLAS,
Debtor

Bankruptcy No. 04-32756
Chapter 7

NOTICE OF HEARING

TO: Debtors and other entities specified in Local Rule 1204(a)

YOU WILL PLEASE TAKE NOTICE that the court will hold a hearing on the Trustee's Motion to Dismiss at 2:30 p.m. on October 27, 2004, in Courtroom No.228B, United States Courthouse, at 316 North Robert Street in St Paul, Minnesota.

Dated: _____, 2004

CLERK OF BANKRUPTCY COURT

DEPUTY CLERK