

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD JUDICIAL DISTRICT**

In Re: Beverly J. Nikolas

Bankruptcy Case # 04-32756

Debtor.

Chapter 7

RESPONSE TO MOTION TO DISMISS

INTRODUCTION

Beverly J. Nikolas as Debtor submits this Response to Trustee's Motion to Dismiss . The Bankruptcy Court has jurisdiction over this motion and it is a core proceeding.

FACTS

Debtor filed her Petition for Bankruptcy relief on May 6, 2004. The original Section 341 hearing was to be heard June 11, 2004. The Bankruptcy Court than rescheduled to June 17, 2004. The Debtor misunderstood the verbal message and she did not get the written change in time thinking that the hearing was again scheduled for a Friday. The attorney for the debtor never set a new date and no notices were ever sent to all parties. After August 6, 2004, Debtor's attorney was contacted by Trustee's office asking why he or his client did not appear. Debtor's attorney requested Trustee's schedule so he could set new date after contacting Debtor. No follow-up took place and no new date was set.

DISCUSSION

Debtor was available on June 11, 2004 and all of the material that Trustee

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Beverly J. Nikolas
Debtor.

UNSWORN CERTIFICATE OF SERVICE

The undersigned, attorney for the Debtor(s), declares that on October 20, 2004 he served the following:

Response to Motion to Dismiss

On each of those listed below, by US mail (unless otherwise indicated) by mailing to each of them a copy thereof by enclosing the same in an envelope with first class postage prepaid and depositing the same in the post office at Rochester, Minnesota, addressed to each of them.

Michael Dietz, Trustee by Fax
206 S Broadway, Suite 505
P O Box 549
Rochester, MN 55903-0549
507-288-9342

U. S. Trustee
1015 U. S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

I, Michael J. Quinn, attorney for the Defendant(s), hereby declare under penalty of perjury that the foregoing is true and correct.

Date: October 20, 2004

\\ Michael J. Quinn
Michael J. Quinn

requested would have been available on that date. The Bankruptcy Court made the emergency change in the hearing date and Debtor never received written notice of the change. The rescheduled date was never properly scheduled and subsequent dates have not been set.

The Debtor should not be made to suffer in this case and a new date for the Section 341 Hearing should be set and notice sent to all parties.

CONCLUSION

The Order that the Trustee requests for Dismissal be denied and date be given when the Section 341 Meeting of Creditors can be rescheduled.

Dated: October 20, 2004

By: /e/ Michael J. Quinn
Michael J. Quinn # 0089011
400 South Broadway, Suite 201
Rochester, MN 55904
(507) 536-0013
For Beverly J. Nikolas