

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: CLISH, COLLEEN MARIE,

Chapter 7
Bky Case No. 04-33034

Debtor.

**NOTICE OF HEARING AND MOTION
FOR TURNOVER OF PROPERTY AND
INFORMATION OF THE ESTATE**

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 2:00 P.M. on October 20, 2004 in
Courtroom No. 228A, 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 2:00 P.M.
on October 15, 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
October 12, 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 May 20, 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 property of the estate, and certain documents and information in order to properly administer the bankruptcy estate.

6. By correspondence dated July 8, 2004, and August 17, 2004, attached hereto and incorporated herewith as Exhibits "A" and "B," the Trustee required turnover of property of the estate and information necessary to complete case administration. Despite the written requests to the debtor's attorney to surrender property or its value, the debtor has failed to surrender and continues to withhold the following described property of the estate: (1) the debtor's Cherokee State Bank checking account in the amount of \$56.66 (actual balance); (2) the debtor's 2003 State Property Tax Refund in the amount of \$869.00 (actual refund), or written confirmation that the refund has not been received; (3) the debtor's 1993 Plymouth Acclaim valued at \$200.00; (4) two computers valued at \$175.00; (5) non-exempt wages in the amount of \$473.66; and (6) copies of the following checks (front and back): (a) #2494 in the amount of \$4,040.00; (b) #2503 in the amount of \$802.78; (c) #2520 in the amount of \$694.00; (d) #2530 in the amount of \$1,009.00; (e) #2540 in the amount of \$802.78; (f) #2542 in the amount of \$694.00; and (g) #2544 in the amount of \$403.00.

7. The debtor is required to surrender all property of the estate to the Trustee under 11 U.S.C. §521 (3) and (4).

8. 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.

9. 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.

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

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

12. The Trustee requests the court to award her \$500.00 for attorney's fees incurred in bringing on this motion.

WHEREFORE, The undersigned requests an order of the Court:

1. Directing the debtor to turnover to the Trustee the following property and information of the estate: (1) the debtor's Cherokee State Bank checking account in the amount of \$56.66 (actual balance); (2) the debtor's 2003 State Property Tax Refund in the amount of \$869.00 (actual refund), or written confirmation that the refund has not been received; (3) the debtor's 1993 Plymouth Acclaim valued at \$200.00; (4) two computers valued at \$175.00; (5) non-exempt wages in the amount of \$473.66; and (6) copies of the following checks (front and back): (a) #2494 in the amount of \$4,040.00; (b) #2503 in the amount of \$802.78; (c) #2520 in the amount of \$694.00; (d) #2530 in the amount of \$1,009.00; (e) #2540 in the amount of \$802.78; (f) #2542 in the amount of \$694.00; (g) #2544 in the amount of \$403.00; and (7) \$500.00 in legal fees and costs and disbursements incurred in bringing on this motion 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 14th day of September, 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 September 14, 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

July 8, 2004

Becky A. Moshier, Esq.
2233 University Ave W #420
St. Paul, MN 55114

Re: Clish, Colleen Marie
Bankruptcy No. 04-33034
Date of Filing: 05/20/04

Dear Ms. Moshier:

My review of this file following the meeting of creditors held on 06/21/04 indicates the debtor has the following non-exempt property:

1. Cherokee State Bank checking account	\$56.66 (actual balance)
2. 2003 State Property Tax Refund	\$869.00 (actual refund)
3. 1993 Plymouth Acclaim	\$200.00
4. 2 Computers	\$175.00
5. Non-exempt wages	\$473.66 *
6. 2004 Federal and State refunds (39%)	<u>unknown</u>
Total:	\$1,774.32

Please send me a copy of the paycheck stub dated May 21, 2004 so that I can calculate the amount due.

Please have the debtor submit a check in the amount of \$1,774.32 made payable to Patti J. Sullivan, Trustee, as and for these non-exempt items. In addition, please have the debtor note the bankruptcy number on the check. If the debtor cannot make the full payment, please contact me to set up payment arrangements.

Please send me a copy of the 403(b) plan describing the type of retirement plan along with a statement verifying the balance on the date of filing. **Please provide this information as soon as you can (within next five days if possible) so I can review the 403(b) to see if an objection to exemptions is necessary.**

- Non-exempt wages calculated as follows:

Estimated from payroll deposit 5-21-04

$\$1,442.31 - 88.98 = \$1,353.33$

$\$1,353.33 \times 25\% = \338.33

Payroll deposit 6-4-04

$\$1,442.31 - 88.97 = \$1,353.34$

$\$1,353.34 \div 10 = \135.33

$\$135.33 \times 4 = \541.34

$\$541.34 \times 25\% = \135.33

EXHIBIT

A

Letter to Becky A. Moshie.
July 8, 2004
Page 2

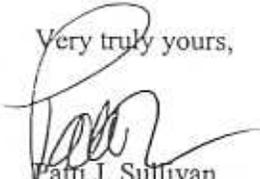
Please have the debtor execute all copies of the Stipulations sent previously and return them to me as soon as possible. Please remind the debtor that as soon as she receives the 2003 property tax refund, she must forward it to me, as Trustee. In addition, I hereby request that the debtor provide to me copies of her 2004 state and federal income tax returns, **including her property tax return**, as soon as they are filed. If the debtor will not qualify for a property tax refund, please have her execute a statement indicating he will not qualify for a property tax refund when she provides copies of the returns.

Please provide me copies, front and back, of the following checks:

1. #2494 in the amount of \$4,040.00;
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6. #2542 in the amount of \$694.00; and
7. #2544 in the amount of \$403.00.

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: Clish, Colleen Marie

EXHIBIT

|| A ||

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~~

8-17-04

**THIS IS A
FOLLOW-UP**

**ACCORDING TO OUR FILES, WE
HAVE NOT RECEIVED A REPLY
TO THIS LETTER, YOUR
EARLY ATTENTION TO THIS
MATTER WILL BE APPRECIATED**

Becky A. Moshier, Esq.
2233 University Ave W #420
St. Paul, MN 55114

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Bankruptcy No. 04-33034
Date of Filing: 05/20/04

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EXHIBIT

"B"

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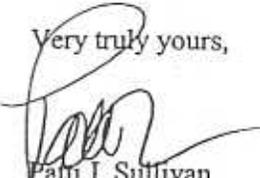
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I would appreciate a response to this letter within ten (10) days from the date of this letter. If you have any questions regarding this matter, please feel free to contact me.
Thank you for your cooperation.

Very truly yours,


Patti J. Sullivan
Trustee in Bankruptcy

PJS:jk

Encl.

cc: Clish, Colleen Marie

EXHIBIT

" B "

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: CLISH, COLLEEN MARIE,

Chapter 7
Bky Case No. 04-33034

Debtor.

TRUSTEE'S MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF MOTION FOR TURNOVER
OF PROPERTY AND 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 May 20, 2004, and is pending before this Court.
2. Patti J. Sullivan, was appointed as Chapter 7 Trustee on May 21, 2004.
3. The Trustee made demand upon the debtor for turnover of property and information needed to administer the bankruptcy case on July 8, 2004, and August 17, 2004, as shown in Exhibits "A" and "B" (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 continues 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 provides the following property and information of the estate: (1) the debtor's Cherokee State Bank checking account in the amount of \$56.66 (actual balance); (2) the debtor's 2003 State Property Tax Refund in the amount of \$869.00 (actual refund), or written confirmation that the refund has not been received; (3) the debtor's 1993 Plymouth Acclaim valued at \$200.00; (4) two computers valued at \$175.00; (5) non-exempt wages in the amount of \$473.66; (6) copies of the following checks (front and back): (a) #2494 in the amount of \$4,040.00; (b) #2503 in the amount of \$802.78; (c) #2520 in the amount of \$694.00; (d) #2530 in the amount of \$1,009.00; (e) #2540 in the amount of \$802.78; (f) #2542 in the amount of \$694.00; and (g) #2544 in the amount of \$403.00.

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 non-exempt funds and information requested in Exhibits "A" and "B" 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 14th day of September, 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:

CLISH, COLLEEN MARIE,

Debtor.

Bky Case No. 04-33034
Chapter 7

UNSWORN CERTIFICATE OF SERVICE

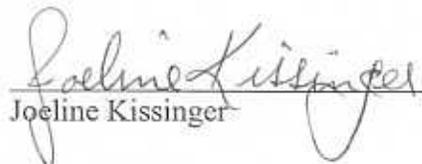
I, Joeline Kissinger, declare under penalty of perjury that on the 14th day of September 2004, I mailed a copy of the attached **Notice of Hearing and Motion for Turnover of Property and Information of the Estate, Trustee's Memorandum of Facts and Law in Support of Motion for Turnover of Property and Information of the Estate, 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:

Becky A. Moshier Esq
2233 University Ave W #420
St. Paul, MN 55114

Colleen Marie Clish
274 George St W
Saint Paul, MN 55107-2761

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

Executed on this 14th day of September 2004.


Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: CLISH, COLLEEN MARIE,

Chapter 7
Bky Case No. 04-33034

Debtor,

ORDER

The above captioned matter came before the Court on October 20, 2004, on motion by the Chapter 7 Trustee Patti J. Sullivan in this case, seeking an order requiring the debtor to turnover property and information of the estate.

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 the following property and information of the estate: (1) the debtor's Cherokee State Bank checking account in the amount of \$56.66 (actual balance); (2) the debtor's 2003 State Property Tax Refund in the amount of \$869.00 (actual refund), or written confirmation that the refund has not been received; (3) the debtor's 1993 Plymouth Acclaim valued at \$200.00; (4) two computers valued at \$175.00; (5) non-exempt wages in the amount of \$473.66; (6) copies of the following checks (front and back): (a) #2494 in the amount of \$4,040.00; (b) #2503 in the amount of \$802.78; (c) #2520 in the amount of \$694.00; (d) #2530 in the amount of \$1,009.00; (e) #2540 in the amount of \$802.78; (f) #2542 in the amount of \$694.00; and (g) #2544 in the amount of \$403.00; and (7) the debtor shall also pay the Trustee \$500.00 as and for attorney's fees awarded in bringing this motion 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.

Dennis D. O'Brien
United States Bankruptcy Judge