

UNITED STATE BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No.: 03-51232 RJK

SEAN R. CUNNINGHAM,

Debtor.

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

TO: THE ABOVE-NAMED DEBTOR, HIS ATTORNEY DANIEL R. BINA, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Robert R. Kanuit, 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 29, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before Honorable Robert J. Kressel, Courtroom No. 2, U.S. Courthouse, 515 West Fifth Street, Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 22, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than November 19, 2004, which is ten (10) days before the time set for the hearing. **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 4002, and Local Rule 1070-1. The petition commencing the debtor's Chapter 7 case was filed on September 26, 2003. Robert R. Kanuit was appointed as Chapter 7 Trustee on September 26, 2003. 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.

6. By correspondence dated September 27, 2004, a copy attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property regarding property of the estate, specifically: \$815.86, which is the bankruptcy estate's portion of debtor's 2003 state income tax refund.

7. The debtor has failed to turn over the property.

8. Because the debtor has failed to turn over the property, 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. This verified motion is based upon all of the files and records herein.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor to turn over to the trustee the property described above.
2. For such other relief as the Court deems just and equitable.

Dated this 3rd day of November, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit (#0252530)  
4815 W. Arrowhead Road, #230  
Hermantown, MN 55811  
(218) 722-7722

#### **VERIFICATION**

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 3rd day of November, 2004.

/e/ Robert R. Kanuit

**EXHIBIT "A"**

September 27, 2004

Mr. Daniel R. Bina  
Attorney at Law  
1639 Main Street North  
Suite 1  
Pine City, MN 55063

RE: Bankruptcy Case No. 03-51232  
Debtor: Sean Cunningham  
Our File No. 04-152K

Dear Mr. Bina:

Regarding my letter to you of August 18, 2004, on the above matter, since that letter I received your client's 2003 property tax refund in the amount of \$445.39. Of that figure, \$115.80 belongs to your client pursuant to our stipulation. I have offset that amount against the \$931.66 he owes me on the state income tax refund, such that he now owes me \$815.86. Please ask him to forward a check in that amount payable to **Robert R. Kanuit, Trustee**, within thirty (30) days of the date of this letter.

Thank you.

Sincerely,

Robert R. Kanuit

RRK:bkp

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No.: 03-51232 RJK

SEAN R. CUNNINGHAM,

Debtor.

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

Robert R. Kanuit, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of his 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 September 26, 2003, and is pending before this Court.
2. Robert R. Kanuit was appointed as Chapter 7 trustee on September 26, 2003.
3. The trustee made demand upon the debtor for turnover of property needed to administer the bankruptcy case on September 27, 2004.
4. The debtor failed to supply necessary property to the trustee in response to the turnover demand.
5. The debtor continues to withhold property necessary to conclude administration of the bankruptcy case.

**DISCUSSION**

Turnover of Information and Property.

Bankruptcy debtor(s) 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 property necessary to 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 property, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor turn over property of the estate, specifically: \$815.86, which is the bankruptcy estate's portion of debtor's 2003 state income tax refund.

Based upon the foregoing, the Chapter 7 trustee is entitled to an order requiring that the debtor turn over the property requested in Exhibit A to the motion so that he may conclude administration of the bankruptcy estate.

Dated this 3rd day of November, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

### **VERIFICATION**

I, Robert R. Kanuit, movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 3rd day of November, 2004.

/e/ Robert R. Kanuit  
Robert R. Kanuit

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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SEAN R. CUNNINGHAM,

Debtor.

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

The undersigned, being and employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Notice of Hearing and Verified Motion for Turnover, Trustee's Memorandum of Facts and Law in Support of Motion for Turnover and (proposed) Order** upon each of the persons/entities named below by mailing to each of them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Sean R. Cunningham  
118 Lark Street  
Sandstone, MN 55072

Mr. Daniel R. Bina  
Attorney at Law  
1639 Main Street North #1  
Pine City, MN 55063

U.S. Department of Justice  
Office of the United States Trustee  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415

AmeriCredit  
Attn: AmeriCredit Department  
Account: 415940741  
PO Box 183853  
Arlington, TX 76096

Dated this 3rd day of November, 2004.

/e/ Bonnie K. Vanderpool  
Bonnie K. Vanderpool

UNITED STATE BANKRUPTCY COURT  
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**ORDER**

The above-captioned matter came before the Court on November 29, 2004, on motion by the Chapter 7 trustee, Robert R. Kanuit, seeking an order requiring the debtor turn over property, specifically: \$815.86, which is the bankruptcy estate's portion of debtor's 2003 state income tax refund.

Robert R. Kanuit 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,

That the debtor shall turn over to the trustee the \$815.86, which is the bankruptcy estate's portion of debtor's 2003 state income tax refund, not later than December 29, 2004.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Honorable Robert J. Kressel  
United States Bankruptcy Judge