

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Chapter 7

Debtor(s).

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5014

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Defendant(s).

MOTION FOR SUMMARY JUDGMENT

COMES NOW, the United States Trustee, through his undersigned attorney, and moves for summary judgment pursuant to Fed. R. Bankr. P. 7056. In support of his motion, he states the following:

1. A hearing has been scheduled on this matter on September 8, 2004 at 2:00 p.m., before the United States Bankruptcy Court, Courtroom No. 2, Fourth Floor, U.S. Courthouse, 515 West First Street, Duluth, MN 55802.

2. Any response to this motion must be filed and delivered not later than September 3, 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 20, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays).
Local Bankruptcy Rule 9006-1.

3. This motion arises under FED. R. BANKR. P. 7056; FED. R. CIV. P. 56; Local Bankruptcy Rules 7007-1; 9013-1; 9013-2; 9006-1 and 9017-1. The underlying complaint filed by the United States Trustee arose under 11 U.S.C. § 727(d)(3) and (a)(6) and FED. R. BANKR. P. 4004(c). This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The defendants are residents of the State of Minnesota. The United States Trustee requests that the Bankruptcy Court grant summary judgment as a matter of law.

4. The underlying bankruptcy case (Bankr. No. 03-51242) was filed on September 27, 2003 and is currently pending before the Bankruptcy Court.

5. Robert Kanuit is the Chapter 7 Trustee appointed to serve in this case.

6. The debtors were granted a discharge in the underlying bankruptcy case on January 6, 2004.

7. The United States Trustee filed a complaint on March 11, 2004, to revoke the discharge of the defendants pursuant to 11 U.S.C. § 727(d)(3).

8. The complaint alleged that the defendant debtors, James Michael and Dottie Lynn Minier failed to comply with the Bankruptcy Court Order dated January 8, 2004, entered in the underlying bankruptcy case of the defendants (Bankr. No. 03-51242), and requested that the Bankruptcy Court revoke the discharge granted to the debtors pursuant to 11 U.S.C. § 727(d)(3).

9. The January 8, 2004 Order directed the defendants to turnover the following to the Chapter 7 Trustee:
- (1) the legal description of the real estate disclosed on debtors' Schedule A;
 - (2) a detailed statement of debtors' business expenses;
 - (3) the claims amounts for Schedule D creditors;
 - (4) information regarding a 2001 Ford F-150 4x4 pickup truck disclosed by debtors at the meeting of creditors but not shown on Schedule G.
 - (5) \$ 250.00 for fees and costs to the Chapter 7 Trustee in connection with bringing the motion for turnover.

See Affidavit of Sarah J. Wencil, Ex. A (January 8, 2004 Order).

10. The defendant debtors, through counsel, filed an answer to the United States Trustee's complaint.

11. With the Answer, the defendants filed the following amended schedules and documents: Schedule A - Real Property; Schedule D - Secured Creditors; Schedule G - Exec. Contracts/Leases; IRS Tax Return Schedule C for 2001 and 2002 in support of business income/expense. *See* Affidavit of Sarah J. Wencil, Ex. B (Answer and Documents)^{1/}

12. The amended schedules and documents were not verified by the debtors and were docketed under the assumption that said documents were exhibits to the Answer. *See* Affidavit of

^{1/} The tax return Schedule Cs for 2001 and 2002 have been removed from this exhibit to avoid the U.S. Trustee submitting said documents over the internet. The Answer and complete attachments are available on the web cite.

Sarah J. Wencil, Ex. C (Clerk's Note to File).

13. The Bankruptcy Court issued an Order for Scheduling Conference to be held on June 9, 2004.

14. The United States Trustee wrote to counsel for the defendants on May 19, 2004, to set forth which elements of the January 8, 2004 Order that the United States Trustee believed were not met in the attachments filed with the Answer. *See* Affidavit of Sarah J. Wencil, Ex. D (Letter).

15. The United States Trustee, in the letter date May 19, 2004, opined that the defendants failed to comply with the following requirements of the January 8, 2004 Order:

- a. Detailed statement of defendants' business expenses on the date of filing as required on Schedules I and J.
- b. Payment of \$ 250.00 to Robert Kanuit.

16. On June 7, 2004, the United States Trustee received a letter dated June 4, 2004, from counsel for the defendants, which represented that counsel had instructed the defendants to provide a detailed statement of business expenses and to pay \$ 250.00 to the Chapter 7 Trustee. *See* Affidavit of Sarah J. Wencil, Ex. E (Letter).

17. At the Scheduling Conference on June 9, 2004, the United States Trustee represented these events to the Bankruptcy Court and stated that he would move for summary judgment after June 30, 2004, if the remaining points of the January 8, 2004 Order were not complied with by June 30, 2004.

18. At the Scheduling Conference, the Bankruptcy Court set July 15, 2004, as the deadline for a summary judgment motion. *See* Affidavit of Sarah J. Wencil, Ex. F (Minutes of Scheduling

Conference).

19. The United States Trustee wrote to defendant's counsel on June 16, 2004, to state that he would bring his summary judgment motion prior to July 15, 2004, if the matters raised in the May 19, 2004 letter were not complied with by June 30, 2004. *See* Affidavit of Sarah J. Wencil, Ex. G.

20. As of this date, the undersigned has not received any contact from defendants or counsel regarding this matter, has not received the itemized business expenses required on Schedules I and J, and has not received the \$ 250.00 payment that is required to be paid to the Chapter 7 Trustee. *See* Affidavit of Sarah J. Wencil.

21. The Chapter 7 Trustee has not received the itemized business expenses required on Schedules I and J, and has not received the \$ 250.00 payment that is required to be paid to him under the January 8, 2004 Order. *See* Affidavit of Robert Kanuit.

22. The docket for the bankruptcy case and the docket for the adversary proceeding reflect that amended Schedules I and/or J have not been filed in this case. *See* Affidavit of Sarah J. Wencil, Exs. H (Docket Bankr. No. 03-51242) & I (Adv. No. 04-5014).

23. The Answer filed by the defendants alleges that they have complied with the Court Order or believed that they have complied with the Court Order, but no amended Schedule and/or J or itemization of business expenses on the date of filing was provided in the answer and no proof of payment of the \$ 250.00 was provided in the Answer.

24. The letter from debtors' counsel dated June 4, 2004, states that counsel instructed his clients to provide the detailed statement of business expenses and the \$ 250 payment to Mr. Kanuit.

25. The defendants have refused to obey the January 8, 2004 Order by failing to submit an

itemization of business expenses, as required in the schedules, and by failing to pay \$ 250.00 to the Chapter 7 Trustee.

26. The refusal to obey a lawful court order is an act under 11 U.S.C. § 727(a)(6).

27. A basis exists to revoke the defendants' discharge in this case under 11 U.S.C. § 727(d)(3) for committing an act specified under 11 U.S.C. § 727(a)(6).

WHEREFORE, the United States Trustee requests that the Bankruptcy Court enter summary judgment revoking the defendant debtors' discharge in bankruptcy case number 03-51242.

Dated: July 12, 2004

Respectfully submitted,
HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500
(612) 664-5516

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,

Chapter 7

Debtor(s).

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5014

James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,

Defendant(s).

AFFIDAVIT OF SARAH J. WENCIL

Sarah J. Wencil, being first duly sworn on oath, deposes and states:

1. I am a trial attorney representing Habbo Fokkena in this matter.
2. Attached are copies of the following documents, which were filed and docketed in the bankruptcy case of the defendants James and Dottie Minier, Bankr. No. 03-51242 or of a document from this adversary proceeding, as noted. All documents were obtained by the undersigned from the web cite for the United States Bankruptcy Court, District of Minnesota.

Exhibit A January 8, 2004 Order

Exhibit B Answer and Response [To] Complaint to Revoke Discharge

Exhibit C Clerk's Note to File dated April 15, 2004

Exhibit D United States Trustee Letter dated May 19, 2004

Exhibit E Arthur M. Albertson Letter dated June 4, 2004

- Exhibit F Judge Kishel's Scheduling Conference Worksheet
Exhibit G United States Trustee Letter dated June 16, 2004
Exhibit H Docket in Bankruptcy Case No. 03-51242
Exhibit I Docket in Adversary Case No. 04-5014

This concludes my affidavit.

Dated: July 12, 2004

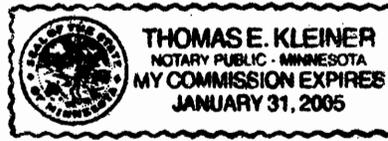


Sarah J. Wencil
Trial Attorney

Subscribed and sworn to before me on the 12th date of July, 2004.



Notary Public, State of Minnesota
My commission expires on 1/31/05



UNITED STATE BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No.: 03-51242 GFK

JAMES M. MINIER and
DOTTIE L. MINIER,
Debtors.

ORDER

The above-captioned matter came before the Court on the 7th day of January, 2004 on motion by the Chapter 7 trustee, Robert R. Kanuit, seeking an order requiring the debtors turn over information, specifically: (1) the legal description of the real estate disclosed on debtors' Schedule A; (2) a detailed statement of debtors' business expenses as required on Schedule I; (3) claim amounts as required on Schedule D; and (4) information regarding a 2001 Ford F-150 4x4 pickup truck disclosed by debtors at the meeting of creditors but not shown on Schedule G.

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,

1. That the debtors shall turn over to the trustee the following information not later than January 23, 2004: (1) the legal description of the real estate disclosed on debtors' Schedule A; (2) a detailed statement of debtors' business expenses as required on Schedule I; (3) claim amounts as required on Schedule D; and (4) information regarding a 2001 Ford F-150 4x4 pickup truck disclosed by debtors at the meeting of creditors but not shown on Schedule G.

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 debtors fail to comply with its terms in a timely manner.

3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Kanuit & Bray, Ltd., within 10 days of entry of this order.

Dated this 8th day of January, 2004.

1E1 Gregory F. Kishel

Honorable Gregory F. Kishel
United States Bankruptcy Judge



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel

Chapter 7

Debtors.

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee,

Plaintiff,

James Michael Minier, and
Dottie Lynn Minier,

**ANSWER AND RESPONSE
COMPLAINT TO REVOKE DISCHARGE**

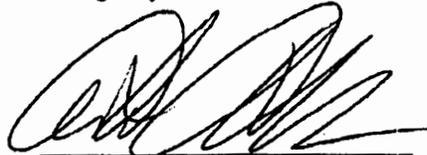
Defendants.

Adv. No. 04-5014

Debtors herein, James Michael Minier and Dottie Lynn Minier, for their answer and response to complaint of the United States Trustee as follows:

1. Admits paragraphs number 1, 2, 3, 4, 5, 6, 7, & and 9 of plaintiff's complaint.
2. Deny both paragraphs numbered 8 of plaintiff's complaint and alleged that Defendants did provide and transmit said information and were without knowledge that said transmission failed. To the best of Defendant's knowledge they had complied with the Courts order and requirements.

WHEREFORE, defendants pray that the relief sought by the Plaintiff be denied.



Arthur M. Albertson, AIN 863
Attorney for Michael and Dottie Minier
101 West Second Street, Ste 107
Duluth, MN 55802

Dated: April 8, 2004

(218) 733-0660

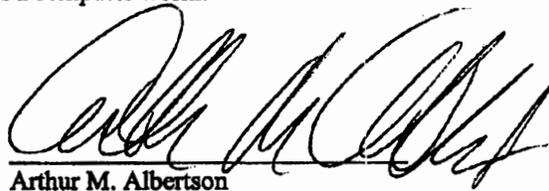
Thursday, April 08, 2004 (2).max

51

necessary to file a Certificate of Mailing of the Schedule A on all of the creditors because it involved real property.

5. When Affiant received the January 7th Order Compelling Turnover, Affiant assumed that this was issued automatically because Affiant had provided the material so close to the Court date.
6. In summary Affiant states that he thought the necessary information had been turned over to Mr. Kanuit, and did not intend to fail or refuse to provide the information.
7. Affiant can not check either the fax log nor his file as he keeps his files stored digitally on his computer. These files as well as his fax log, were lost approximately ten days ago when Affiant lost his hard drive as a result of a computer worm.

FURTHER AFFIANT SAYETH NOT



Arthur M. Albertson

Subscribed and Sworn to before me this
8th day of April, 2004.



Notary Public



In re **JAMES MICHAEL MINIER,
DOTTIE LYNN MINIER**

Case No. _____

Debtors

SCHEDULE A - REAL PROPERTY - AMENDED

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
REAL ESTATE LOCATED IN ST LOUIS COUNTY, STATE OF MINNESOTA, LEGALLY DESCRIBED AS FOLLOWS, TO-WIT: THE NORTHERLY SIX HUNDRED SIXTY FEET OF THE EASTERLY THREE HUNDRED THIRTY FEET (NLY 660' OF ELY 330') OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4 OF NW 1/4), SECTION SEVENTEEN (17) TOWNSHIP SIXTY (60), RANGE FOURTEEN (14).	ONE HALF FEE SIMPLE WITH SHERRIE BLOCKER OWNING ONE-HALF	J	11,500.00	13,500.00

Sub-Total > 11,500.00 (Total of this page)

Total > 11,500.00

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re **JAMES MICHAEL MINIER,
DOTTIE LYNN MINIER**

Case No. _____

Debtors

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS - AMENDED

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Code debtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Code debtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS, INCLUDING ZIP CODE	Husband, Wife, Joint, or Community		CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
	H W J C	X					
Account No. 64000394 AMERICAN STAT BANK OF THE NORT PO BOX 448 COOK, MN 55723	X	J					
DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN							
MORTGAGE REAL ESTATE LOCATED IN ST LOUIS COUNTY, STATE OF MINNESOTA, LEGALLY DESCRIBED AS FOLLOWS, TO-WIT:							
Value \$ 11,500.00						13,500.00	2,000.00
Account No. 621005 BOUNDARY WATERS PO BOX 809 ELY, MN 55731		J					
1970 JOHN DEERE SKIDDER, MODEL #4401 SN 098996T 1975 TREEFARMER SHEAR, MODEL VULCAN SN 5581-001							
Value \$ 12,500.00						12,960.00	460.00
Account No. STEELWORKERS CREDIT UNION 29 CHAPMAN ST E ELY, MN 55731		J					
PURCHASE MONEY 1976 TIMBERJACK SKIDDER 240D							
Value \$ 13,000.00						10,000.00	0.00
Account No. 							
Value \$							
Subtotal (Total of this page)						36,460.00	
Total (Report on Summary of Schedules)						36,460.00	

0 continuation sheets attached

In re **JAMES MICHAEL MINIER,
DOTTIE LYNN MINIER**

Case No. _____

Debtors

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES -- AMENDED

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
FORD MOTOR CREDIT FORD CREDIT PO BOX 64400 COLORADO SPRINGS, CO 80962-4440	LEASE OF 2001 FORD F-150 PICKUP. LEASE PAYMENTS OF \$550

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

Arthur M. Albertson

ATTORNEY AT LAW
101 WEST SECOND STREET
SUITE 100
DULUTH, MINNESOTA 55802

Phone (218) 733-0660
Fax (218) 733-0767

April 8, 2004

Clerk of Bankruptcy Court
Federal Courthouse
515 W. First Street
Duluth, MN 55802

RE: Bankruptcy Case No. 03-52242 Adv. No 04-5014
Debtor: Michael J. and Dottie L. Minier

Dear Clerk of Bankruptcy Court:

Enclosed please find the debtors's Answer in the above matter together with the following amended Schedules/etc for filing in the above matter together with a certificate of service upon the Trustee for Creditors and the U.S. Trustee.

Schedule A - Real Property
Schedule D - Secured Creditors
Schedule G - Exec. Contracts/Leases
IRS Tax Return Schedule C for 2001 & 2002 in support of business income/expense

If there are other matters or questions, please feel free to call me.

Sincerely,



Arthur M. Albertson
AMA/hd
Enc.

E:\FILES0_CLIENTS\M PVT\MINIER, MIKE & DOT\TRANSMITTAL.wpd

Thursday, April 08, 2004 (2).max

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

CLERK'S NOTE TO FILE

03-51242
Case No.: **04-5014** Date: **04/15/04** Time:

Name of debtor: **JAMES AND DOTTIE MINIER**

Document title and number: **ANSWER & RESPONSE TO COMPLAINT, AND
AMENDED SCHEDULES**

Contact person:

Comment:

The image contained in document no. 5-1 was filed in the "unlisted documents box" on April 8, 2004 at 23:04 (approx. 11:00 p.m.). According to Mr. Albertson's cover letter, he is filing an Answer and amended schedules A,D,G and tax returns in support of business income/expenses. On April 9th, I left a message on Mr. Albertson's voice mail to call the court regarding the documents listed above. In the unlisted documents box he placed all of the documents in case no. 03-51242. I was confused as to what he was filing. I have tried for several days to reach Mr. Albertson and have not been able to leave a message because of his voice mail not accepting them at the time. Mr. Albertson has not been in contact with the clerk's office regarding this matter, as of this date. If indeed, there are amended schedules to be filed within the main case, Mr. Albertson did not provide a signature declaration or certificate of service. I have docketed the "schedules" together with the Answer and Response in the adversary proceeding, in assumption that they are exhibits to the Answer.

By Anita Miller
Deputy Clerk

12/08/92; Rev12/27/95

Bancap Docket Entry Request for: 3-51242 Database: Live

The request was made: Thu Apr 8 23:04:43 2004

Please check the ERS In Box option

Requestor: Arthur M Albertson

Firm: Arhtur M Albertson

Attorney street address: 101 W Second St Ste 107

Attorney city address: Duluth, MN

Notify: ARTHUR M. ALBERTSON Phone: (218) 733-0660

Debtor name: MINIER, JAMES MICHAEL

Chapter: 7

Judge: GFK

Docket Info:

ANSWER TO COMPLAINT TOGETHER WITH AFFIDAVIT AND ATTACHMENTS (AMENDED SCHEDULES A, D, G, AND IRS SCHEDULES C FOR 2001 & 2002) WITH CERTIFICATE SERVICE.

Image Name:

/export/LIVE/addpartyfile/04-04-08/3-51242_DocketImg__23-04-43.pdf

Session: 40761bfb04f757c1



FILE COPY

U.S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

U.S. Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Direct Dial: (612) 664-5504
Fax: (612) 664-5516
e:mail: Sarah.J.Wencil@usdoj.gov

May 19, 2004

Arthur M. Albertson
1010 West Second Street
Suite 100
Duluth, MN 55802

Re: *Michael J. and Dottie L. Minier*, Bankr. No. 03-52242
Habbo Fokkena v. Michael J. and Dottie L. Minier, Adv. No. 04-5014

Dear Mr. Albertson:

The scheduling conference is approaching on June 9, 2004 at 3:00 p.m. I received a copy of your materials: Schedule A, Schedule D, Schedule G and Tax Returns, and Mr. Kanuit and I agree that your clients have not met all of the requirements of the Court's Order dated January 8, 2004, such as:

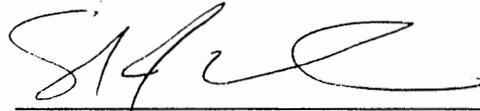
1. A detailed statement of the debtors' business expenses, as required on Schedules I and J. The tax returns represent past business expenses and do not suffice. The debtors need to complete an amended schedule J of the current business expenses on the date of filing and verify that document.
2. The debtors have not paid the attorney fee of \$ 250.00 to Mr. Kanuit. Mr. Kanuit has stated, and likewise, would testify, if necessary, that he has spent a considerable amount of time in this case attempting to get you and your clients to amend schedules and provide accurate information that you and your clients are duty bound to provide in the first place. *See Mertz v. Rott*, 955 F.2d 596 (8th Cir. 1992) ("the petition including schedules and statements, must be accurate and reliable, without the necessity of digging out and conducting independent examinations to get the facts." (quotation omitted)); LAWRENCE P. KING, COLLIER ON BANKRUPTCY, ¶ 521.03[3] at 521-10 to 521-11 (2003 ed.) (stating that attorney should investigate affairs of the debtor to make certain that attorney has all the information to prepare full and complete schedules, for it is the duty of the debtor to present intelligible and true schedules). Once errors are discovered, it is the duty of the debtor and counsel to amend the schedules and statement. *Id.* ¶ 521.07, at 521-27 (2003 ed.). *In re Dreyer*, 127 B.R. 587 (Bankr. N.D. Tex. 1991) (noting that bankruptcy attorney should have known that debtor had duty to timely file complete and accurate schedules); *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002) (holding that duty to disclose is a continuing duty, and debtor must amend financial statements if circumstances change).

Therefore, the award of the attorney fees on behalf of Mr. Kanuit was fair and reasonable under the Code, and as the Bankruptcy Court has included that award in its Order, the U.S. Trustee believes that your clients must comply with that part of the Order, as well.

Please call if you have a question or concern about this letter. Please note that I will be out of town during the period of May 24, 2004 until May 28, 2004, attending a conference.

Sincerely,

HABBO FOKKENA
UNITED STATES TRUSTEE

A handwritten signature in black ink, appearing to read 'S. Wencil', written over a horizontal line.

Sarah J. Wencil
Trial Attorney

cc: Robert Kanuit
James M. and Dottie L. Minier

Arthur M. Albertson

ATTORNEY AT LAW
101 WEST SECOND STREET
SUITE 100
DULUTH, MINNESOTA 55802

RECEIVED

Phone (218) 733-0660
Fax (218) 733-0767

2004 JUN -7 A 9:55

OFFICE OF THE
UNITED STATES TRUSTEE

June 4, 2004

Sarah J. Wencil
US Trustee Attorney
300 S 4th Stl, 1015 Courthouse
Minneapolis, MN 55415

RE: Bankruptcy Case No. 03-52242 Adv. No 04-5014
Debtor: Michael J. and Dottie L. Minier

Dear Ms. Wencil:

Please be advised that I have instructed my clients to send a check for \$250 to Mr. Kanuit and to meet with their accountant to provide the detail statement of business expenses as requested.

If there are other matters or questions, please feel free to call me.

Sincerely,



Arthur M. Albertson
AMA/hd

cc: file

EXHIBIT "E"

JUDGE KISHEL'S SCHEDULING CONFERENCE WORKSHEET

DATE AND TIME: Date: June 9, 2004 Time: 3:00 PM

Bky Case No. 03-51242	HABBO FOKKENA v. JAMES & DOTTIE MINIER
Adv Pro. No. 04-5014	Atty for Plaintiff: Sarah Wencil ✓
	Atty for Defendant: Arthur Albertson <i>no app</i>

CONTENTS OF ORDER: (SCHEDULING ORDER 2)

Paragraph 2 (Discovery): 7/2/04 Paragraph 6 (Stip of Facts): _____
(n. 30 days before ¶10)

Paragraph 4 (W Lists): _____ Paragraph 7 (Motions in Limine): _____
(n. 40 days before ¶10) SO2- (Motions deadline): 7/15/04
(n. 30 days before ¶10)

Paragraph 5.a (Exh. Lists): _____ Paragraph 8 (Trial Briefs): _____
(n. 40 days before ¶10) (n. 20 days before ¶10)

Paragraph 5.b (Exh. Exch.): _____ Paragraph 10 (Trial Date): _____
(n. 30 days before ¶10) (n. 60 days after ¶2)

Paragraph 5.c, and d): _____
(Stip. of admissibility of exhibits, and statement of objections)
(n. 20 days before ¶10)

ANTICIPATED TRIAL TIME: _____

BANKRUPTCY JUDGE'S NOTES:

T'ee will be UST's final W -

Detailed stmt of bsmo exps still not TO'd

+ the 250. in atty fees still not pd yet -

If D2 don't prov T'ee w/ rmade of rgd info by

6/30/04, she will mke mtg/s.J. - hence this D/L. 8-1



U.S. Department of Justice

Office of the United States Trustee

*Districts of Minnesota, North Dakota,
South Dakota and Iowa*

U.S. Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

Direct Dial: (612) 664-5504
Fax: (612) 664-5516
e-mail: Sarah.J.Wencil@usdoj.gov

June 16, 2004

Arthur M. Albertson
101 West Second Street
Suite 100
Duluth, MN 55802

Re: *Michael J. and Dottie L. Minier*, Bankr. No. 03-52242
Habbo Fokkena v. Michael J. and Dottie L. Minier, Adv. No. 04-5014

Dear Mr. Albertson:

At the Status Conference on June 9, 2004, the Court stated that it would issue a trial Order in the above named matter and set July 15, 2004 as the deadline for submitting depositive motions.

Please note that if the Order is not complied with (as set forth in my May 19, 2004 letter) by June 30, 2004, I will move for summary judgment with an affidavit of Mr. Kanuit. I did put this process on the record at the status conference hearing.

Please call if you have a question or concern about this letter.

Sincerely,

HABBO FOKKENA
UNITED STATES TRUSTEE

Sarah J. Wencil
Trial Attorney

Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (Duluth)

Bankruptcy Petition #: 03-51242

Date filed: 9/27/03
Assigned to: CHIEF JUDGE GREGORY F KISHEL
Chapter 7 voluntary individual no asset joint

===== * Attorneys *
JAMES MICHAEL MINIER ARTHUR M ALBERTSON
aka 101 W 2ND ST STE 107
MIKE MINIER DULUTH, MN 55802
4410 HIGHWAY 21 218-733-0660
EMBARASS, MN 55732
SSN: XXX-XX-2998
* Debtor *

DOTTIE LYNN MINIER ARTHUR M ALBERTSON
fka (See above)
DOTTIE HENSEL
4410 HIGHWAY 21
EMBARASS, MN 55732
SSN: XXX-XX-7653
* Debtor *

U S TRUSTEE
1015 U S COURTHOUSE
300 S 4TH ST
MINNEAPOLIS, MN 55415
* U S Trustee *

ROBERT R KANUIT
4815 W ARROWHEAD RD STE 230
HERMANTOWN, MN 55811
* Trustee *

Proceedings include all events.

- 9/27/03 1 Voluntary Petition all schedules and statements.
Electronically filed by Arthur M Albertson on: Sat Sep 27
14:25:41 2003 (A701) [EOD 09/27/03] [03-51242]
- 9/27/03 2 Declaration of Original Signature Re: [1-1] Electronic
Voluntary Petition . (A701) [EOD 09/27/03] [03-51242]
- 9/27/03 -- Added U S TRUSTEE. (auto) [EOD 09/27/03] [03-51242]

Proceedings include all events.

03-51242 In re: JAMES MICHAEL MINIER and DOTTIE LYNN MINIER

9/27/03 3 Creditor list supplied by debtor. (A701) [EOD 09/27/03]
[03-51242]

10/3/03 -- Filing Fee Paid in Full Re: [1-1] Electronic Voluntary
Petition (Filing Fee \$ 200.00 Receipt # 24998) (sls)
[EOD 10/03/03] [03-51242]

10/3/03 4 Appointment of Interim Trustee and Approval of Bond. (sls)
[EOD 10/03/03] [03-51242]

10/3/03 5 Notice of Meeting of Creditors under 11 USC 341(a)
Scheduled For 10:30 11/5/03 At Courtroom 2 (Duluth) Last
Day To Oppose Discharge: 1/5/04 Certificate of Service. (sls)
[EOD 10/03/03] [03-51242]

12/8/03 6 Notice of Hearing and Motion by Trustee ROBERT R KANUIT to
Turn Over Property . Hearing Scheduled for 2:00 1/7/04 at
Courtroom 2 (Duluth) Affidavit, Memorandum of Law, Proof of
Service, Proposed Order. (A214) [EOD 12/08/03]
[03-51242]

12/8/03 7 Certificate of Service by Trustee ROBERT R KANUIT of [6-1]
Motion to Turn Over Property by ROBERT R KANUIT . (slr)
[EOD 12/10/03] [03-51242]

1/6/04 8 Order Discharging Debtor DOTTIE LYNN MINIER, Debtor JAMES
MICHAEL MINIER . Certificate of Service. (rmg)
[EOD 01/06/04] [03-51242]

1/7/04 9 Minute Sheet Re: [6-1] Motion to Turn Over Property by
ROBERT R KANUIT . ROBERT KANUIT APPEARED ON BEHALF OF
TRUSTEE. MOTION GRANTED. (amm) [EOD 01/08/04]
[03-51242]

1/8/04 10 Order Granting [6-1] Motion to Turn Over Property by
ROBERT R KANUIT . (GFK) COURT'S CERTIFICATE OF SERVICE.
(amm) [EOD 01/08/04] [03-51242]

3/11/04 -- Complaint (04-5014) HABBO G FOKKENA
vs. DOTTIE LYNN MINIER . NOS 424
Objection To Discharge (727) by Sarah Wencil on: Thu Mar
11 14:47:02 2004 (A052) [EOD 03/11/04] [04-5014]

4/15/04 11 Clerk's Note to File. (amm) [EOD 04/15/04] [03-51242]

Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (Duluth)

Adversary Proceeding #: 04-5014

Date filed: 3/11/04

Assigned to: CHIEF JUDGE GREGORY F KISHEL

Related Bankruptcy Case #: 03-51242

In Re: JAMES MICHAEL MINIER, DOTTIE LYNN MINIER

Demand: \$0,000

Nature of Suit: 424

=====

* Attorneys *

HABBO G FOKKENA
300 S 4TH ST STE 1015
MINNEAPOLIS, MN 55415
* Plaintiff *

SARAH J WENCIL
US TRUSTEE OFFICE
300 S 4TH ST STE 1015
MINNEAPOLIS, MN 55415
612-664-5500

v.

DOTTIE LYNN MINIER
4410 HIGHWAY 21
EMBARASS, MN 55732
SSN: XXX-XX-7653
* Defendant *

ARTHUR M ALBERTSON
101 W 2ND ST STE 107
DULUTH, MN 55802
218-733-0660

JAMES MICHAEL MINIER
4410 HIGHWAY 21
EMBARASS, MN 55732
SSN: XXX-XX-2998
* Defendant *

ARTHUR M ALBERTSON
(See above)

Proceedings include all events.

04-5014 In re: HABBO G FOKKENA and DOTTIE LYNN MINIER

3/11/04 1 Complaint (04-5014) HABBO G FOKKENA
vs. DOTTIE LYNN MINIER . NOS 424
Objection To Discharge (727) by Sarah Wencil on: Thu Mar
11 14:47:02 2004 (A052) [EOD 03/11/04] [04-5014]

3/11/04 2 Summons issued on JAMES MICHAEL MINIER, DOTTIE LYNN MINIER.
Answer due 4/12/04 for JAMES MICHAEL MINIER, for DOTTIE
LYNN MINIER Non-Service of Process Deadline 7/9/04 (A052)
[EOD 03/11/04] [04-5014]

3/11/04 3 Certificate of Service by Plaintiff HABBO G FOKKENA of
[1-1] Complaint NOS 424 Objection To Discharge (727) . (A052)
[EOD 03/11/04] [04-5014]

4/8/04 4 Pro Bono Notice to Defendants Re: [1-1] Complaint NOS 424
Objection To Discharge (727) . Court's Certificate of
Mailing. (amm) [EOD 04/08/04] [04-5014]

4/8/04 5 Answer to Complaint by Defendant JAMES MICHAEL MINIER,
Defendant DOTTIE LYNN MINIER . CERTIFICATE OF SERVICE. (amm)
[EOD 04/15/04] [04-5014]

4/15/04 6 Clerk's Note to File. (amm) [EOD 04/15/04] [04-5014]

5/7/04 7 Order for Scheduling Conference ;Sched/Pre-Trial Conf. set
for 3:00 6/9/04 at Courtroom 2 (Duluth) . Certificate of
Mailing. (amm) [EOD 05/07/04] [04-5014]

6/9/04 8 Minute Sheet Re: [7-1] Scheduling Conference Order . (sls)
[EOD 06/14/04] [04-5014]

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Chapter 7

Debtor(s).

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No.

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Defendant(s).

AFFIDAVIT OF ROBERT R. KANUIT

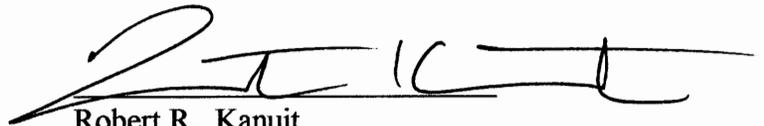
Robert R. Kanuit, being first duly sworn on oath, deposes and states:

1. I am the Chapter 7 Trustee appointed to serve in the bankruptcy case of James and Dottie Minier, Bankr. No. 03-51242.
2. Previously in connection with this adversary proceeding, I executed an affidavit stating that the debtor had failed to comply with the Bankruptcy Court Order dated January 8, 2004 in Bankr. No. 03-51242, wherein the debtors failed to turnover the following:
 - a. the legal description of the real estate disclosed on debtors' Schedule A;
 - b. a detailed statement of debtors' business expense as required on the schedule;
 - c. claim amounts as required on Schedule D;

- d. information regarding a 2001 Ford F-150 pickup truck disclosed by the debtors at the meeting of creditors, but not listed on Schedule G;
 - e. attorney fees of \$ 250.00 for the affiant in connection with costs in bringing the motion for turnover.
3. After the United States Trustee's complaint was filed and since my previous affidavit was executed, the debtors complied with some, but not all of the January 8, 2004 Order.
 4. As of the date of this affidavit, the debtors have failed to provide a detailed statement of debtors' business expense as required on the schedule, as required by the January 8, 2004 Order.
 5. As of the date of this affidavit, the debtors have failed to pay \$ 250.00 to affiant, as required by the January 8, 2004 Order.

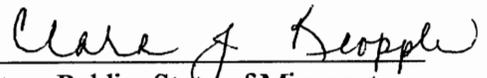
This concludes my affidavit.

Dated: July 8, 2004



Robert R. Kanuit
Chapter 7 Trustee

Subscribed and sworn to before me on the 8 date of July, 2004.


Notary Public, State of Minnesota
My commission expires on 1/31/06



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Chapter 7

Debtor(s).

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5014

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Defendant(s).

MEMORANDUM OF LAW

The United States Trustee submits this Memorandum of Law in support of his motion for summary judgment.

PROCEDURAL STANDARDS

The standard for a motion for summary judgment pursuant to Bankruptcy Rule 7056(c) and Federal Rule 56(c) provides in part as follows:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. BANKR. P. 7056(c); FED. R. CIV. P. 56(c) (emphasis added).

The burden is on the moving party to show that no genuine dispute exists on a material fact, *City of Mt. Pleasant, Iowa v. Association Electric Corp.*, 838 F.2d 268, 273 (8th Cir. 1988), and once this burden is met, the non-moving party must show that there is genuine dispute over a material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548 (1986). When evaluating the motion, inferences drawn from the underlying facts are to be decided in the light most favorable to the non-moving party. *United States v. Diebold*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1976).

"[T]he burden on the moving party may be discharged by "showing" ... that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In addition, a failure by the nonmoving party to submit evidence to support its claims will result in summary judgment being entered against him. *Metro North State Bank v. Gaskin*, 34 F.3d 589 (8th Cir. 1994) (refusing to overturn the entry of summary judgments by a district court where nonmoving party failed to submit evidence in support of its claim). The facts and circumstances relied upon to avoid summary judgment must "attain the dignity of substantial evidence and not be such merely as to create a suspicion." *Krause v. Perryman*, 827 F.2d 346, 350 (8th Cir. 1987). See also *Rasmussen v. Unruh (In re Unruh)*, 278 B.R. 796, 799-800 (Bankr. D. Minn. 2002) (O'Brien, J.).

ARGUMENT

The United States Trustee filed his complaint to revoke the debtors' discharge in the underlying

bankruptcy case pursuant to 11 U.S.C. § 727(d)(3), which provides: “On request of the trustee...or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if — (3) the debtor committed an act specified in subsection (a)(6) of this section.” Subsection (a)(6) of Section 727 provides: “the debtor has refused, in the case – (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify.”

In this case, there is no material issue of fact as to the elements of Section 727(d)(3).

- The debtors obtained a discharge in this case on January 6, 2004.
- The Bankruptcy Court issued a lawful Order on January 8, 2004.
- The debtors failed to comply with the January 8, 2004 Order by failing to submit the following:
 - a. A detailed statement of debtors’ business expenses, as required by the schedules.
 - b. The \$ 250 award for attorney fees and costs payable to the Chapter 7 Trustee.

The failure to comply with the January 8, 2004 Order is an act specified in 11 U.S.C. § 727(a)(6), and therefore, a basis exists as a matter of law to revoke the debtors’ discharge under 11 U.S.C. § 727(d)(3). No question of fact exists in this case because compliance with the Order would have gone through either the Bankruptcy Court docket, through the Office of the U.S. Trustee or through the Chapter 7 Trustee. The docket reports and the affidavit of the undersigned, and the affidavit of the Chapter 7 Trustee show that the debtors have not obeyed the January 8, 2004 Order of

the Bankruptcy Court.

Having met all of the elements of 11 U.S.C. § 727(d)(3), and by reference 11 U.S.C. § 727(a)(6)(A), the United States Trustee requests that the Bankruptcy Court find that the United States Trustee is entitled to judgment as a matter of law and revoke the debtors' discharge.

Dated: July 13, 2004

Respectfully submitted,
HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500
(612) 664-5516

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Chapter 7

Debtor(s).

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5014

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Defendant(s).

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT**

At Duluth, Minnesota the _____ day of _____, 2004, in the above named adversary proceeding pursuant to 11 U.S.C. § 727(d)(3), the United States Trustee's Motion for Summary Judgment pursuant to FED. R. BANKR. P. 7056 came before the undersigned.

Based upon the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, and arguments of parties on the record, the Bankruptcy Court finds that there is no genuine issue as to any material fact and the United States Trustee is entitled to judgement as a matter of law. In accordance with its findings, the Bankruptcy Court enters the following Findings of

Fact, Conclusions of Law, and Order for Judgment:

Findings of Fact

1. The debtors obtained a discharge in this case on January 6, 2004.
2. This Bankruptcy Court issued a lawful Order on January 8, 2004.
3. The debtors failed to comply with the January 8, 2004 Order by failing to submit the following:
 - a. A detailed statement of debtors' business expenses, as required by the schedules.
 - b. The \$ 250 award for attorney fees and costs payable to the Chapter 7 Trustee.

Conclusions of Law

The failure to comply with the January 8, 2004 Order is an act specified in 11 U.S.C. § 727(a)(6), and therefore, a basis exists as a matter of law to revoke the debtors' discharge under 11 U.S.C. § 727(d)(3).

Order for Judgment

IT IS HEREBY ORDERED: the discharge granted in bankruptcy case number 03-51242 is revoked. LET JUDGMENT BE ENTERED ACCORDINGLY.

Chief Judge Gregory F. Kishel

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Chapter 7

Debtor(s).

BK 03-51242 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5014

**James Michael Minier, a/k/a Mike Minier
and Dottie Lynn Minier, f/k/a Dottie Hensel,**

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

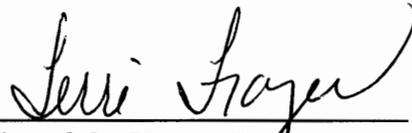
That on July 13, 2004, she served a copy of the attached: Motion for Summary Judgement, Application for Default Judgement, Affidavit, Memorandum of Law and proposed Findings of Fact, Conclusions of Law and Order for Judgement, by placing said copies in a postpaid envelope addressed to the person(s), herein after named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressees:

James Michael and Dottie Lynn Minier
4410 Highway 21
Embarrass, MN 55732

Arthur M. Albertson
101 West 2nd Street Suite 107
Duluth, MN 55802

Robert Kanuit
4815 Arrowhead Road Suite 230
Hermantown, MN 55811



**Office of the United States Trustee
Terri Frazer**

Subscribed and sworn to before
me this 12th day of July, 2004.


Notary Public

