

**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**

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**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).**

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**WITHDRAWAL OF MOTION FOR SUMMARY JUDGMENT**

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1. The United States Trustee withdraws his motion for summary judgment set for October 6, 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. Initially, this matter was set on for hearing on September 8, 2004.

3. The Defendant Debtors failed to file a response to the motion for summary judgment, and the motion was ready to be granted by default on September 8, 2004.

4. The United States Trustee received no contact from Counsel for the Debtors or the Debtors (which would have been inappropriate, given they were represented by Counsel) regarding the motion for summary judgment and had no reason to suspect that the matter could not proceed by

default.

5. On approximately September 8, 2004 and prior to the scheduled time for the hearing, the United States Trustee checked with the Chapter 7 Trustee and was told that the Debtors took the following action to comply with the Court Order:

- a. Paid \$ 250.00 attorney fee to the Trustee by check in name of Debtors; and
- b. Submitted Schedule C from 2003 tax returns to support itemization of business expenses listed on Schedule J.<sup>1/</sup>

5. Based on this information, the United States Trustee quickly continued the motion for summary judgment to avoid the motion being granted by default.

6. The United States Trustee believes that the action by the Debtors is cause to find that the Debtors have not refused to obey a lawful Court order under 11 U.S.C. § 727(a)(6)(A) and 11 U.S.C. § 727(d)(3).

7. By withdrawing this motion, the United States Trustee does not waive any opportunity to investigate the conduct of Counsel, seek disgorgement of any attorney fee paid, or to seek sanctions against Counsel in the bankruptcy case and/or this adversary proceeding in regard to the following concerns:

- a. The Answer and attached Affidavit in this case more or less admit that the trustee attorney fee award imposed against the Debtors in the Court Order underlying this complaint was the result of Counsel inadvertently failing to

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<sup>1/</sup> The debtors Schedule J expenses total \$ 1,750 per month; and the 2003 tax return business expenses total \$ 14,801 or \$ 1,233 per month. No amended Schedule J has been filed as of this date in the bankruptcy case.

forward information to the Chapter 7 Trustee, not by the failure of the Debtors to forward documents to Counsel.

- b. In the bankruptcy case, no verified amended Schedule J has been filed based on the information provided by Debtors for their itemized business expenses.
- c. The United States Trustee does not understand why Counsel failed to contact the United States Trustee or file a response to the motion for summary judgment regarding the status of the compliance with the Court Order and/or to request a continuance if contact with the Debtors could not be made, when the failure to respond would have resulted in the revocation of the Debtor's discharge in this case.

8. The United States Trustee will move to dismiss this adversary proceeding at a future date.

Dated: September 27, 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

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**CERTIFICATE OF SERVICE**

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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.

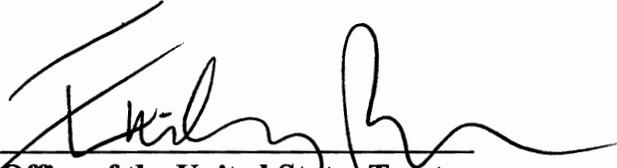
That on September 27, 2004, she served a copy of the attached: Withdrawal of Motion for Summary Judgement by placing said copies in a postpaid envelope addressed to the person(s), herein after named, at the place and address stated below, which is the last known address, and by depositing said envelope 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 2<sup>nd</sup> Street Suite 107  
Duluth, MN 55802

Robert Kanuit  
4815 Arrowhead Road Suite 230  
Hermantown, MN 55811



**Office of the United States Trustee  
Emily Rohr**