

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

Defendant(s).

NOTICE OF HEARING AND MOTION FOR DEFAULT JUDGMENT

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Sarah J. Wencil, hereby moves the Court for a default judgment to be entered against Mark Jeffery Hallich (the defendant debtor) on the following grounds:

1. The United States Bankruptcy Court will hold a hearing on this motion at 2:00 p.m. on October 6, 2004, in Courtroom No. 2, Fourth Floor, United States Courthouse, at 515 West First Street, in Duluth, Minnesota.

2. Any response to this motion must be filed and delivered not later than October 1, 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 September 27, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays,

Sundays and legal holidays). Local Bankruptcy Rule 9006-1. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.

4. The United States Trustee filed the above named complaint under FED. R. BANKR. P. 7001(4) to seek a revocation of the discharge entered in defendant debtor's bankruptcy case pursuant to 11 U.S.C. § 727(d)(3).

5. Upon information and belief, the defendant, Mark Jeffrey Hallich, is a resident of Minnesota.

6. A Summons was issued on August 3, 2004, directing the defendant debtor to file an answer with the United States Bankruptcy Court within thirty (30) days pursuant to the Bankruptcy Rules. *See* Att. Ex. 1 (Docket Report in Adv. Case No. 04-5035). The United States Trustee mailed said complaint and summons to the defendant debtor and to bankruptcy counsel on August 3, 2004. *See* Att. Ex. 2 (copy of Affidavit of Service). The certificate of service was docketed on August 3, 2004. *See* Att. Ex. 1.

7. An answer to the United States Trustee's complaint was due on approximately September 2, 2004. FED. R. BANKR. P. 7012(a).

8. As of the date of this Application, the defendant debtor has not filed an answer to the United States Trustee's complaint. *See* Affidavit of Default.

9. The United States Trustee made the following allegation in his complaint:

a. The defendant debtor commenced the present bankruptcy case on February

25, 2004.

- b. A discharge was granted on June 8, 2004.
- c. The case has not been closed as of the date [the underlying] complaint was prepared by the undersigned.
- d. On May 24, 2004, the Chapter 7 Trustee filed a motion demanding that the debtor turnover the following property of the estate: 1995 Crestliner Boat; a 1993 140 hp Johnson outboard motor; a 1995 Shorelander trailer; a 1972 van; a 1990 Chevrolet Suburban; a Smith & Wesson 38-caliber pistol; and a Taurus 22-caliber pistol.
- e. On July 7, 2004, the Bankruptcy Court entered an Order directing the debtor to turnover the property of the estate listed in paragraph [d above] and ordering the debtor to pay \$ 250.00 to the trustee for his attorney fees.
- f. As of [the complaint] date, the debtor has failed to comply with the Bankruptcy Court's Order, dated July 7, 2004.

10. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court.

11. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.

WHEREFORE, the United States Trustee requests that the Bankruptcy Court grant the motion and enter a default judgment revoking the defendant debtor's discharge in bankruptcy case number 04-50203.

Dated: September 9, 2004

HABBO G. FOKKENA
UNITED STATES TRUSTEE
REGION 12

BY: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
1015 U.S. Courthouse
300 South Fourth St.
Minneapolis, MN 55415
(612) 664-5500
IA ATTY NO. 14014

Exhibit 1

Return to Search Results Page

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

Adversary Proceeding #: 04-5035

Date filed: 8/3/04
Assigned to: CHIEF JUDGE GREGORY F KISHEL
Related Bankruptcy Case #: 04-50203
In Re: MARK JEFFREY HALLICH,
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.

MARK JEFFREY HALLICH
59194 - 412TH PLACE
SWATARA, MN 55785
SSN: XXX-XX-6769
Tax ID: 41-1776880
* Defendant *

Proceedings include all events.

04-5035 In re: HABOO G FOKKENA and MARK JEFFREY HALLICH

8/3/04 1 Complaint (04-5035) HABBO G FOKKENA
vs. MARK JEFFREY HALLICH . NOS 424
Objection To Discharge (727) by Sarah Wencil on: Tue Aug
3 09:42:45 2004 (A052) [EOD 08/03/04] [04-5035]

8/3/04 2 Summons issued on MARK JEFFREY HALLICH. Answer due 9/2/04
for MARK JEFFREY HALLICH Non-Service of Process Deadline
12/1/04 (A052) [EOD 08/03/04] [04-5035]

8/3/04 3 Certificate of Service by Plaintiff HABBO G FOKKENA of
[2-1] Summons by MARK JEFFREY HALLICH, [1-1] Complaint NOS
424 Objection To Discharge (727) . (A052) [EOD 08/03/04]
[04-5035]

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies under penalty of perjury 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 August 3, 2004, she served a copy of the United States Trustee's Summons & Complaint to Revoke Discharge and Verification in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter 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.

Addressee(s):

Mark Jeffrey Hallich
59194 - 412th Place
Swatara, MN 55785

John P. Dimich
Dimich Law Office
102 NE 3rd St. Suite 120
Grand Rapids, MN 55744

Robert R. Kanuit
4815 W. Arrowhead Rd. Suite 230
Hermantown, MN 55811



Office of the United States Trustee
Terri Frazer

Subscribed and sworn to before
me this 3rd day of August, 2004.


Notary Public

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

Defendant(s).

AFFIDAVIT OF DEFAULT

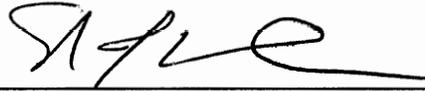
I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney for the United States Trustee.
2. I am the attorney of record for the United States Trustee in the above entitled adversary proceeding.
3. The original Summons was issued on August 3, 2004 by the United States Bankruptcy Court.
4. The United States Trustee mailed the original Summons and the Complaint to the defendant debtor address listed on the docket.
5. As of this date, I have not been served with an answer by the defendant debtor.
6. A Docket report generated on September 9, 2004 shows that no answer was

docketed by the Bankruptcy Court within the time prescribed by the Bankruptcy Rules. *See* Motion for Default (Att. Ex. 1).

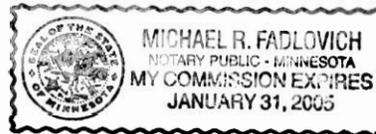
This concludes my Affidavit.

Dated: September 9, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me
The 9th Day of September, 2004.


Notary Public

My commission expires on 11/31/05

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

Defendant(s).

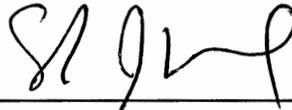
AFFIDAVIT OF IDENTIFICATION

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled adversary proceeding.
3. The name and address of the defendant debtor in the above entitled matter is listed on the Notice of Commencement of Case under Chapter 7 of the Bankruptcy Code (case number 03-04-50203), as the following: Mark Jeffrey Hallich, 59194 - 412th Place, Swatara, MN 55785. *See Att. Ex. 1.*
4. Original Schedule I lists that the defendant debtor is over the age minority and is unemployed. *See Att. Ex. 2.*
5. According to the attached Schedule, the defendant debtor is not an infant and is not employed by a military organization.

6. The defendant debtor is represented by counsel in bankruptcy case number 04-50203: John P. Dimich, and the U.S. Trustee mailed a copy of the complaint to bankruptcy counsel.
7. Based on the foregoing, the United States Trustee is of the belief that the defendant debtor is competent.

Dated: September 9, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me
The 9th Day of September, 2004.



Notary Public

My commission expires on 11/31/05



Exhibit 1

UNITED STATES BANKRUPTCY COURT

District of Minnesota

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 02/25/04.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected by accessing the court's web site at www.mnb.uscourts.gov or at the bankruptcy clerk's office at the address listed below. **NOTE:** The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):

MARK JEFFREY HALLICH
A PLUS CONCRETE & BRICK

59194 - 412TH PLACE
SWATARA, MN 55785

Case Number:
04 - 50203 - GFK

Social Security/Taxpayer ID Nos.:
XXX-XX-6769/41-1776880

Attorney for Debtor(s) (name and address):

JOHN P DIMICH
DIMICH LAW OFFICE
16 NE 3RD ST
GRAND RAPIDS, MN 55744

Telephone number: 218-326-9646

Bankruptcy Trustee (name and address):

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

Telephone number:

Meeting of Creditors:Date: **April 7, 2004**Time: **10:00 am**

Location: **U S BANKRUPTCY COURT
U S COURTHOUSE RM 416 COURTROOM 2
515 W 1ST ST
DULUTH, MN 55802**

Deadlines:Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:
06/07/04

Deadline to Object to Exemptions:Thirty (30) days after the *conclusion* of the meeting of creditors.**Creditors May Not Take Certain Actions:**

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.**Address of the Bankruptcy Clerk's Office:**

U S BANKRUPTCY COURT
U S COURTHOUSE RM 416
515 W 1ST ST
DULUTH, MN 55802

Web address: www.mnb.uscourts.gov**For the Court:**

Clerk of the Bankruptcy Court:
PATRICK G. DE WANE

Hours Open: Monday - Friday 8:00 AM - 5:00 PM

Date: 02/26/04

Exhibit 2

In re **Mark Jeffrey Hallich**

Case No. _____

Debtor

(If known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

Debtor's Marital Status: Divorced	DEPENDENTS OF DEBTOR AND SPOUSE	
Debtor's Age: 40	RELATIONSHIP	AGE
Spouse's Age:		
EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Concrete Finisher	
Name of Employer	A Plus Concrete & Brick - Self	
How long employed	7 years	
Address of Employer	59194 - 412th Place Swatara, MN 55785	

	DEBTOR	SPOUSE
Income: (Estimate of average monthly income)		
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly.)	\$ <u>0.00</u>	\$ _____
Estimated monthly overtime	\$ <u>0.00</u>	\$ _____
SUBTOTAL	\$ <u>0.00</u>	\$ _____
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ <u>0.00</u>	\$ _____
b. Insurance	\$ <u>0.00</u>	\$ _____
c. Union dues	\$ <u>0.00</u>	\$ _____
d. Other (Specify) _____	\$ <u>0.00</u>	\$ _____
SUBTOTAL OF PAYROLL DEDUCTIONS	\$ <u>0.00</u>	\$ _____
TOTAL NET MONTHLY TAKE HOME PAY	\$ <u>0.00</u>	\$ _____
Regular income from operation of business or profession or farm (attach detailed statement)	\$ <u>0.00</u>	\$ _____
Income from real property	\$ <u>0.00</u>	\$ _____
Interest and dividends	\$ <u>0.00</u>	\$ _____
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	\$ <u>0.00</u>	\$ _____
Social security or other government assistance (Specify) _____	\$ <u>0.00</u>	\$ _____
Pension or retirement income	\$ <u>0.00</u>	\$ _____
Other monthly income (Specify) _____	\$ <u>0.00</u>	\$ _____
TOTAL MONTHLY INCOME	\$ <u>0.00</u>	\$ _____
TOTAL COMBINED MONTHLY INCOME	<u>\$ 0.00</u> (Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document: **NONE**

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

Defendant(s).

AFFIDAVIT ON MERITS AND AMOUNT DUE

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled case.
3. A monetary judgment has not been requested in this adversarial proceeding. The relief sought by the United States Trustee is revocation of the defendant debtor's Chapter 7 discharge in case number 04-50203.
4. The United States Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727(d)(3).
5. Said relief is supported by the following facts:
 - a. The defendant debtor commenced the present bankruptcy case on February

- 25, 2004.
- b. A discharge was granted on June 8, 2004.
 - c. The case has not been closed as of the date [the underlying] complaint was prepared by the undersigned.
 - d. On May 24, 2004, the Chapter 7 Trustee filed a motion demanding that the debtor turnover the following property of the estate: 1995 Crestliner Boat; a 1993 140 hp Johnson outboard motor; a 1995 Shorelander trailer; a 1972 van; a 1990 Chevrolet Suburban; a Smith & Wesson 38-caliber pistol; and a Taurus 22-caliber pistol.
 - e. On July 7, 2004, the Bankruptcy Court entered an Order directing the debtor to turnover the property of the estate listed in paragraph [d above] and ordering the debtor to pay \$ 250.00 to the trustee for his attorney fees.
 - f. As of [the complaint] date, the debtor has failed to comply with the Bankruptcy Court's Order, dated July 7, 2004.
6. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court.
7. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.
8. The United States Trustee has moved the Bankruptcy Court to revoke the discharge of the defendant debtor for failure to comply with the Bankruptcy Court's Order, dated May 26, 2004.

Dated: September 9, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me
The 9th Day of September, 2004.



Notary Public

My commission expires on 1/31/05



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

Defendant(s).

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

At Duluth, Minnesota on this _____ day of _____, 2004, the United States Trustee's Motion for Default Judgment, which was supported by an Affidavit of Default, an Affidavit of Identification, and an Affidavit on the Merits as required by Local Bankruptcy Rule 7055-1 came before the undersigned.

Findings of Fact

1. The defendant debtor commenced the present bankruptcy case on February 25, 2004.
2. A discharge was granted on June 8, 2004.
3. On July 7, 2004, this Court entered an Order directing the defendant debtor to

turnover the following property of the estate by July 21, 2004:

- a. 1995 Crestliner Boat;
 - b. a 1993 140 hp Johnson outboard motor;
 - c. a 1995 Shorelander trailer;
 - d. a 1972 van;
 - e. a 1990 Chevrolet Suburban;
 - f. a Smith & Wesson 38-caliber pistol;
 - g. a Taurus 22-caliber pistol.
 - h. \$ 250.00 attorney fees incurred by the trustee.
4. The defendant debtor has failed to comply with the Bankruptcy Court's Order, dated July 7, 2004.

Conclusions of Law

Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.

Order for Judgment

IT IS HEREBY ORDERED: the defendant debtor's discharge is revoked in bankruptcy case number 04-50203. LET JUDGMENT BE ENTERED ACCORDINGLY.

The Honorable Gregory F. Kishel
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

**Mark J. Hallich
d/b/a A Plus Concrete & Brick**

Chapter 7

Debtor(s).

BK 04-50203 GFK

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-5035

Mark J. Hallich

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 September 9, 2004, she served a copy of the attached: Motion for Default Judgement, Affidavit of Default, Affidavit of Identification, Affidavit on the Merits, 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:

Mark Jeffrey Hallich
59194 - 412th Place
Swatara, MN 55785

John P. Dimich
Dimich Law Office
102 NE 3rd St. Suite 120
Grand Rapids, MN 55744

Robert R. Kanuit
4815 W. Arrowhead Rd. Suite 230
Hermantown, MN 55811

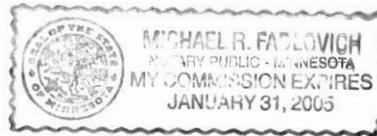


**Office of the United States Trustee
Terri Frazer**

**Subscribed and sworn to before
me the 9th day of September, 2004.**



Notary Public



My commission expires on 1/31/05