

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
MOHD H. HAMAD, ) CASE NO. 04-65557 JPK  
 ) Chapter 7  
 )  
Debtor. )  
\*\*\*\*\*  
STACIA L. YOON, TRUSTEE, )  
 )  
Plaintiff, )  
v. ) ADVERSARY NO. 06-6182  
LYNN FISEL, )  
 )  
Defendant. )

JUDGMENT FOR TURNOVER

The complaint filed against the defendant in this adversary proceeding seeks turnover from the defendant of documents alleged to be in the defendant's possession. The record establishes that proper service of the complaint and summons was made, and that the defendant has failed to appear in this action or otherwise respond to the complaint. Default against the defendant was entered by the Clerk on September 21, 2006, and on December 8, 2006, the plaintiff filed a Motion for Judgment.

The premise of the complaint is that the defendant is in possession of documents subject to the provisions of 11 U.S.C. § 542(e). Realizing that the procedure followed by another Division of this Court requires matters such as that presented by this complaint to be presented by adversary proceeding, the Court does not agree with that procedure. 11 U.S.C. § 542(e) provides that "the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records and papers, relating to the debtor's property or financial affairs, to turn over to disclose such recorded information to the trustee". Fed.R.Bankr.P. 7001, defining the parameters of an adversary proceeding, in pertinent part provided in sub-paragraph (1) of that rule that a "proceeding to recover money or property . . . (exceptions not applicable to this action)" requires an adversary proceeding. The

Trustee/plaintiff is not seeking the recovery of money or property, but rather is seeking the recovery of records specifically within the scope of 11 U.S.C. § 542(e). As a result, this adversary proceeding could have been supplanted by a motion for turnover pursuant to 11 U.S.C. § 542(e).

The utilization of an adversary proceeding in lieu of a motion for turnover does not preclude the Court's entry of judgment on the plaintiff's complaint. The protections afforded to a punitive "target" of turnover by means of an adversary proceeding are more expansive than those accorded to the "target" by means of a contested matter for turnover pursuant to Fed.R.Bankr.P. 9014. Thus, the record establishes that the plaintiff is entitled to a turnover order pursuant to 11 U.S.C. § 542(e), and the procedural mechanism utilized by the plaintiff is of no moment here.

IT IS ORDERED, ADJUDGED AND DECREED that the defendant Lynn Fisel is ordered to turn over to the plaintiff the following documents:

1. All business books and records of the debtor;
2. 2004 state and federal income tax returns; and
3. 2004 state and federal business tax returns.<sup>1</sup>

Dated at Hammond, Indiana on March 9, 2007.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Attorney of Record  
Defendant

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<sup>1</sup> The Court respectfully requests that the plaintiff utilize a motion for turnover pursuant to 11 U.S.C. § 542(e) in the circumstances of this adversary proceeding, rather than pursuing the requested remedy by means of an adversary proceeding. However, the "drop dead" procedure of N.D.Ind.L.B.R. B-2002-2(a) does not apply to a motion for turnover with respect to a party other than a debtor; see, N.D.Ind.L.B.R. B-2002-2(a)(20). Thus, upon the filing of a motion for turnover in the circumstances of this case, the Court will set a hearing on the motion and provide notice of the hearing to both the movant and to the target of the motion.