

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
TIMOTHY ALAN STEVENS,) CASE NO. 05-61191 JPK
) Chapter 7
Debtor.)

ORDER REGARDING FILING OF CASE BY A PERSON
HOLDING A POWER OF ATTORNEY FOR THE DEBTOR

This case was initiated by documentation signed by a person other than the debtor who holds a power of attorney granted by the debtor. On April 29, 2005, the Court conducted a hearing to determine the propriety and effectiveness of this practice, in lieu of the debtor's individual signature. The debtor appears by counsel David Dabertin; the Chapter 7 Trustee Stacia Yoon appears personally; the United States Trustee appears by Assistant United States Trustee Alex Edgar by telephone connection in the courtroom.

Mr. Edgar advises that the execution of bankruptcy documents by a person holding a power of attorney for the debtor is acceptable to the United States Trustee, provided that the power of attorney clearly provides its holder with the authority to specifically execute bankruptcy documents on behalf of the debtor. Mr. Edgar notes that I.C. 30-5-5-11(a)(7) provides specific statutory authority in the State of Indiana for the use of a power of attorney with respect to bankruptcy proceedings, and that several cases throughout the United States have approved of this practice. Any document signed by a person holding a power of attorney should be signed in the name of that person, as "attorney-in-fact for [name of debtor]". At any rate, the record in this case establishes that the initiating documents, signed by the debtor himself, have now been filed of record.

Next, a discussion was had as to whether or not a person holding a power of attorney for the debtor may represent the debtor – in lieu of the debtor's personal participation – at a § 341 meeting. The Court determines that such representation is not appropriate, and that the debtor personally must participate in the § 341 meeting, by whatever mechanism for that

participation is acceptable to the trustee conducting that meeting.

Finally, questions arose as to whether or not the Court should be involved in requests by debtors that § 341 meetings be conducted by a means other than personal appearance by the debtor, whether that means be by telephone, interrogatories, or other device. The answer to this question is very clear. 11 U.S.C. § 341(a) provides that "the United States trustee shall convene and preside at a meeting of creditors", and 11 U.S.C. § 341(c) states that the "court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors". The exclusive authority of the United States Trustee, and by delegation the panel trustees who conduct the § 341 meetings in most cases, over § 341 meetings is further emphasized by the provisions of Fed.R.Bankr.P. 2003. Based upon the foregoing, this Court has no involvement in § 341 meetings, including any authority to review motions to continue or reschedule those meetings, or any motions to conduct those meetings other than by personal attendance by the party to be examined. It is within the exclusive discretion of the United States Trustee and the panel Trustee to determine the manner in which a § 341 meeting will be conducted.

IT IS ORDERED that the documentation submitted in this case under a power of attorney held by Patricia Ann Stevens on behalf of Timothy Alan Stevens is effective for all purposes in this case.

IT IS FURTHER ORDERED that Timothy Alan Stevens must personally be subject to the § 341 examination by the Trustee.

IT IS FURTHER ORDERED that the manner in which the § 341 examination of Timothy Alan Stevens may be conducted is within the exclusive discretion of the Trustee who will conduct the examination.

Dated at Hammond, Indiana on May 6, 2005.

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

Distribution:

Debtor, Attorney for Debtor

Alex L. Edgar, Assistant US Trustee

Stacia L. Yoon, Trustee

David R. DuBois, Trustee

Daniel L. Freeland, Trustee

Gordon E. Gouveia, Trustee

Calvin D. Hawkins, Trustee

Kenneth A. Manning, Trustee

Paul R. Chael, Trustee

Debra L. Miller, Trustee