

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF INDIANA
 HAMMOND DIVISION

IN RE:)	
)	
ROGELIO TORRES,)	CASE NO. 06-62301 JPK
)	Chapter 7
Debtor.)	

STACIA L. YOON, TRUSTEE,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 07-2079
)	
ROGELIO TORRES,)	
)	
Defendant.)	

ORDER FOR HEARING

This adversary proceeding was initiated by a complaint filed on July 26, 2007. The record discloses that proper service was made upon the defendant, and that no appearance or response to the complaint was filed. As a result, the Clerk entered an entry of default on September 5, 2007. On September 28, 2007, the plaintiff filed a Motion for Judgment, together with an affidavit apparently intended to be supportive of the prayer for relief in the complaint.

The problem is this. Paragraph 4 of the complaint states that “the Trustee ascertained the Defendant possessed funds held in a bank account in the amount of \$3,453.99 on the date he filed his Petition for Relief.” Paragraph 5 of the complaint states that the “\$3,453.99 of that refund is an asset of the Defendant’s bankruptcy estate,” (emphasis supplied). Paragraph 6 of the complaint states that demand was made upon the Defendant “for the turnover of said tax refund money, which this Court ordered on June 29, 2007,” (emphasis supplied). The turnover order entered on June 29, 2007 required the debtor to turnover to the Trustee “Harris Bank funds in the amount of \$3,453.99.” In paragraphs 2 and 4 of the affidavit filed on September 28, 2007, references are made to funds held in a bank account; however, paragraph 3 of the affidavit references a tax

refund.

Thus, both in the complaint and in the affidavit there are conflicting references to the debtor's failure to turnover an asset which is at times referred to as a tax "refund" and at other times is referred to as a "bank account." The price one pays for creating discrepancies in what should be an absolutely clear record is appearing at an inconvenient hearing to clarify the record for purposes of entry of a default judgment. The price to be paid would be a pittance if the hearing were scheduled on the plaintiff's regular monthly Chapter 7 trustee motion day, and the pittance price would not reflect the Court's disgruntlement with the lack of clarity in this record because a set of forms was utilized and only partially modified to reflect the facts in this case. Therefore, the price of creating this record is a little bit higher.

IT IS ORDERED that a hearing will be held on **January 31, 2008 at 11:00 A.M.** pursuant to Fed.R.Bank.P. 7055/ Fed.R.Civ.P. 55(b)(2) to address the exact circumstances upon which the complaint is based.

Dated at Hammond, Indiana on January 2, 2008.

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

Distribution:
Attorney for plaintiff
Defendant